

APP. 1

12/19/2017 12:43 #041 P.001/001
From:

VIRGINIA DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION SERVICES
DUE PROCESS HEARING

IN RE: ALLYSON CLEMENTS

INTERIM ORDER

The parent and advocate rested the student's case on December 8, 2017. The Richmond Public Schools made a motion to dismiss. That motion was taken under advisement and this Due Process Hearing is continued for the presentation of further evidence, if necessary, and is now scheduled for February 15, 2018 at 9:30 a.m. at the Huguenot Community Center location.

It is hereby ORDERED that a Comprehensive Assessment Evaluation shall be conducted and completed on, or before February 1, 2018. Each evaluation shall be conducted as indicated herein and by the identified evaluators:

- * Psychological: Dr. Shanan Raines
- * Educational: Ms. Lissa Williams
- * OT- Sensory Assessment: Suzanne Starseed
- *Functional Behavior Assessment and Classroom Observations: Dr. Marla Crawford
- *Vocational Assessment and Assistive Technology Assessment:

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Either, or both Mary Leffler Jennifer Nickerson of Hanover
County Public Schools.

Such evaluations shall be reported immediately upon their
completion on or before February 1, 2018 to the advocate,
Kandise Lucas and to counsel for Richmond Public Schools, Nicole
M. Thompson. Each party shall then immediately file the reports
with me with any comments.

Objections by the parties to the ordered evaluators are
noted, have been examined and are

Virginia:

In the Circuit Court of the City of Richmond, John Marshall

Courts Building

MARLA FAITH CRAWFORD,

Plaintiff,
v. **Case No; CL 18-4077**

**SCHOOL BOARD FOR THE CITY
OF RICHMOND,**
Defendant.

MEMORANDUM OPINION AND ORDER

On January 10, 2019, Plaintiff appeared pro se. Defendant appeared by counsel. The Parties appeared on Plaintiff's Motion for Sanctions¹ and Motion for Summary Judgment. Both Parties presented arguments on the motions and the Court then took the matters under advisement. For the reasons that follow, the Court will deny both motions.

I. Background

On December 8, 2017, the School Board for Richmond Public Schools (“School Board”) held a due process hearing in the case of A.V. v. School Board of Richmond Public Schools, The presiding

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Hearing Officer in that case ordered Plaintiff to complete a Functional Behavioral Assessment in accordance with 8 VAC 20-81-170 and 8 VAC 20-81-210(P)(8). Plaintiff completed and submitted a Functional Behavioral Assessment to the School Board on March 28, 2018. Concurrently, Plaintiff submitted an invoice to the School Board for \$26,900 representing her fee for 116 hours of work.

¹Plaintiff filed the Motion for Sanctions under the same case number but with the style of "Crawford v. York."

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The School Board has since contested Plaintiff's invoice. The School Board argues that the Functional Behavioral Assessment was deficient, that Plaintiff overbilled for her services, and that certain costs included in the invoice were improper. This litigation followed.

II. Analysis

A. Motion for Sanctions

Plaintiff's Motion for Sanctions sought sanctions against Defendant's attorney Melissa York pursuant to Federal Rule of

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Civil Procedure 11 and Va. Code § 8.01-271.1. Plaintiff alleges multiple violations which she avers unnecessarily delayed and increased the cost of litigation. Plaintiff also claims that Ms. York's filings included false and/or unverified factual allegations.

The Court first notes that the Federal Rules of Civil Procedure are not operative in this Court. Therefore, the only alleged ground for sanctions is pursuant to Va. Code § 8.01-271.1. That provision provides that:

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Code § 8.01-271.1, “If a pleading, motion, or other paper is signed or made in violation of this rule, the court ... shall impose ... an appropriate sanction.” *Id.*

Plaintiff failed to present any evidence that Ms. York filed any pleadings with false or fraudulent statements. Similarly, there is no evidence that Ms. York's filings were done solely to cause

unnecessary delay or needless increase in the cost of litigation.

Accordingly, the Court DENIES Plaintiff's Motion for Sanctions.

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B. Motion for Summary Judgment

Summary judgment is appropriate when there is no genuine dispute of material fact. Rule 3:20. A court considering a motion for summary judgment must “accept[] as true those inferences from the facts that are most favorable to the nonmoving party, unless the inferences are forced, strained, or contrary to reason.” *Fultz v. Delhaize Am., Inc.*, 278 Va. 84, 88, 677 S.E.2d 272, 274 (2009).

The purpose of summary judgment is “to expedite litigation with as few technicalities as possible and thus avoid common law procedural tactics interposed for delay.” *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 5, 82 S.E.2d 588, 590 (1954). But, a court presented with a motion for summary judgment must take care to not “short-circuit[] litigation pretrial and . . . decide[] the dispute without permitting the parties to reach a trial on the merits.” *Fultz*, 278 Va. at 88, 677 S.E.2d at 274.

Plaintiff seeks summary judgment on the theory of breach of an oral contract or, in the alternative, quantum meruit. Defendant

argues that there is no contract and Plaintiffs claim sounds solely in quantum meruit. The undisputed facts provide only that the third-party Hearing Officer ordered that Plaintiff complete a Functional Behavioral Assessment. (Complaint, ¶ 8; Answer, ¶ 8.) Plaintiff does not allege that the Hearing Officer was acting as an agent of the School Board and, even if she did, that fact is far from uncontested. Therefore, taking the facts in the light most favorable to the Defendant--as the Court must at this state of the litigation--no oral contract was formed.

Quantum meruit recovery is “based on an implied contract to pay the reasonable value of services rendered.” *Mongold v. Woods*, 278 Va. 196, 203, 677 S.E.2d 288, 292 (2009) (citations omitted). “Where service is performed by one, at the instance and request of another, and... nothing is said between the parties as to compensation for such service, the law implies a

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contract, that the party who performs the service shall be paid a reasonable compensation therefor.” *Id.* (quoting *Rea v. Trotter*, 67 Va. (26 Gratt.) 585, 592 (1875)) (alterations in original). The

elements of a quantum meruit claim are that: (1) the plaintiff confers a benefit on the defendant; (2) the defendant knows that the plaintiff is conferring the benefit, and (3) the defendant accepts or retains the benefit under circumstances which would make it inequitable for the defendant to retain the benefit without paying for its value. See, e.g., *Gutterman Iron and Metal Corp. v. Figg Bridge Developers, LLC*, 82 Va. Cir. 304, 2011 WL 12678210 at *3 (Chesapeake Cir. Ct. 2011); *Franconia Two, LP v. Omnidguru Systems, Inc.*, 82 Va. Cir. 256, 2011 WL 7478291 at *4 (Fairfax Cir. Ct. 2011); *R.M. Harrison Mech. Corp. v. Decker Indus., Inc.*, 75 Va. Cir. 404, 2008 WL 10669311 at *3 (Hopewell Cir. Ct. 2008).

The Court will assume, without deciding, that the Functional Behavioral Assessment was a benefit conferred on the School Board and that the School Board was aware that Plaintiff was ordered to complete the Functional Behavioral Assessment. Regardless, summary judgment is currently inappropriate as to the third element: whether the School Board accepted or retained the benefit under circumstances which would be inequitable without paying for its value. The

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uncontested facts, at this time, only demonstrate that Plaintiff delivered the Functional Behavioral Assessment to the School Board. Contested facts remain, such as, but not limited to, whether the School Board accepted or utilized the Functional Behavioral Assessment. Furthermore, the School Board contends that the Functional Behavioral Assessment was sub-standard and provided “very little useful information for which an eligibility team” could utilize. (Answer, ¶ 15.)

While Plaintiff states a compelling claim for quantum meruit recovery, summary judgment is not appropriate at this time because material facts remain in dispute. Accordingly,

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the Court DENIES Plaintiff's Motion for Summary Judgment. Plaintiff may, however, re-file her motion if these facts become undisputed during the discovery process.

Lastly, the Court notes that the School Board raised the issue of sovereign immunity in its Brief in Opposition to Motion for Summary Judgment. However, the School Board has not raised sovereign immunity through a plea in bar of its own. Because the Court denied Plaintiff's Motion for Summary Judgment on other

grounds, it need not address the issue of sovereign immunity at this time.

III. Conclusion

For the foregoing reasons, the Court DENIES Plaintiffs Motion for Sanctions and DENIES Plaintiff's Motion for Summary Judgment.

The Clerk is directed to forward a certified copy of this Order to the parties.

IT IS SO ORDERED.

Enter: 2/11/2019

s/ Phillip L. Hairston, Judge

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

DR. MARLA FAITH CRAWFORD,

Plaintiff,
v. Case No. CL18004077-00

SCHOOL BOARD FOR RICHMOND CITY,

Defendant.

ORDER

THIS DAY came the parties, personally and by counsel, on the School Board for Richmond City, properly known as the School Board for the City of Richmond's ("School Board") Special Plea of Sovereign Immunity. Upon consideration of the arguments, the pleadings submitted, and for good cause and the reasons stated on the record at the December 17, 2019 hearing, it is hereby,

ADJUDGED, ORDERED, and DECREED that the School Board's Special Plea of Sovereign Immunity is GRANTED and the case is DISMISSED WITH PREJUDICE; it is further

ADJUDGED, ORDERED and DECREED that Plaintiff's Motion for Reconsideration to be *Viewed De Novo* is DENIED. without a hearing pursuant to Rule 4:15 (d)

For the purpose 1:1 of the Rules of the Supreme Court of

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Virginia, this is not a final order and this Court shall retain jurisdiction of this matter beyond the 21 days to consider the School Board's previously filed Motion for Sanctions.

The Clerk is directed to send certified copies of this Order to all counsel of record and to Dr. Marla Crawford, Plaintiff herein who is appearing *pro se*.

ENTER: 1/10/20

By: s/Melvin Hughes

Judge

We ask for this:

Melissa Y. York (VSB No. 77493)

Jeremy D. Capps (VSB No. 43909)

Harman, Claytor, Corrigan & Wellman

P.O. Box 70280 oe ws

Richmond, Virginia 23255 Se

804-747-5200 - Phone

804-747-6085 - Fax

myork@hcew.com

jeapps@hccw.com

Counsel for the School Board for Richmond City

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Seen and objected to:

Signature waived pursuant to Rule 1:13 of the Rules of the
Supreme Court of Virginia

Marla Faith Crawford
Elite Educational Consulting
6523 South Stevens Hollow Drive
Chesterfield, VA 23832
804-397-4480 — Phone
eliteeducationalconsulting9@gmail.com

Pro Se Plaintiff

Virginia:

In the Circuit Court of the City of Richmond, John

Marshall Courts Building

MARLA FAITH CRAWFORD,

Plaintiff,
v. Case No.: CL 18-4077

SCHOOL BOARD FOR THE CITY

OF RICHMOND,

Defendant.

ORDER

On July 9, 2021, Plaintiff appeared pro se. Defendant appeared by counsel. The Parties appeared on Defendant's Motion for Sanctions. Both Parties presented arguments and evidence on the motion and the Court then took the matters under advisement. Upon consideration of the arguments and the evidence presented, the Court **GRANTS** Defendant's Motion for Sanctions in the amount of \$6,663.00.

The Court also **OVERRULES** Plaintiff's objections to the introduction of Defendant's exhibits to support the Motion for Sanctions.

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“All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer.”¹ As the Supreme Court of Virginia ruled on August 10,

¹“Va. R. Sup. Ct. 1:1

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2020, the order entered by this Court on January 10, 2020 was not a final order. Therefore, this Court does retain jurisdiction over this matter.

Finally, pursuant to Va. Code § 8.01-271.1, this Court imposes a pre-filing review injunction for any future lawsuits filed against Defendant, Melissa York, the law firm of Harman, Clayton, Corrigan & Wellman and its members, or against any other party based on any of the facts alleged in this suit.

Endorsements of the parties are waived pursuant to Rule 1:13. The Clerk is directed to forward a certified copy of this Order to the parties. **IT IS SO ORDERED.**

ENTER: 7/26 /21

s/Margaret P. Spencer, Judge
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VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court
Building in the City of Richmond on Thursday the 2nd day of June,
2022.*

Marla Faith Crawford, Appellant,

against Record No. 210877

Circuit Court No. CL18-4077

School Board for Richmond City, Appellee.

From the Circuit Court of the City of Richmond

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Muriel- Theresa Pitney Clerk

By: s/Lesley K. Smith

Deputy Clerk

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court
Building in the City of Richmond on Monday the 3rd day of
October, 2022.*

Marla Faith Crawford, Appellant,

against Record No. 210877

Circuit Court No. CL18-4077

School Board for Richmond City, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside
the judgment rendered herein on June 2, 2022 and grant a rehearing
thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:

Deputy Clerk

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND

3 -----

4 MARLA CRAWFORD,

5

6 Plaintiff

7 CASE NO. CL18004077-1

8 -vs-

9 RICHMOND CITY PUBLIC SCHOOLS,

10

11 Defendant

12 -----

13

14 TRANSCRIPT OF PROCEEDINGS

15

16 June 10, 2019

17 400 North 9th Street

18 Courtroom 310

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19 Richmond, Virginia 23219

20 Commencing at 9 a.m.

21

22 BEFORE: THE HONORABLE MELVIN
 HUGHES, JUDGE

2

1 A P P E A R A N C E S

2

3 MARLA CRAWFORD, Pro se

4 Plaintiff

5

6

7 HARMONIE GROUP, ESQS.

8 BY: MELISSA Y. YORK, ESQ.

9 SIMONE WILLIAMS, ESQ.

10 4951 Lake Brook Drive

11 Suite 100

12 Glen Allen, Virginia 23060

13 Attorneys for Richmond City Public Schools

14

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1 (At which time, the Court Reporter was
2 first duly sworn by the Court.)

3

4 THE COURT: All right. Ladies what's on
5 your minds?

6 MS. YORK: Six motions pending for today's
7 hearing. I would suggest that we start with the two
8 dispositive motions.

9 THE COURT: All right.

10 MS. YORK: That may eliminate the need for
11 the Court to hear other issues.

12 THE COURT: All right.

13 DR. CRAWFORD: Excuse me? You said to

14 start with what?

15 MS. YORK: The school board's motions which

16 would dispose of the case, which would be the
special --

17 DR. CRAWFORD: Excuse me, Your Honor

18 Judge Hughes, I'm Dr. Marla Crawford. I'm the

plaintiff

19 in this case, and we are here to address issues

20 concerning this matter.

21 And the things that we are trying to -- the

22 first thing on the agenda is not to dispose of this
case.

4

1 Ms. York is attempting to derail and do a back-door- in to

2 dismiss a claim of a debt collection for money that is

2 owed to me for work that I provided for the school
board.

4 Before the Court -- please forgive me if

5 I've a poor shadow. I have to drink water. I have to

6 put this prosthetic piece in and out my mouth

because my

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7 jaw is dislocated. So, I'm, like, working here.

8 This is a matter concerning work that was
9 done. I'm entitled to be paid. Ms. York has already
10 admitted to the Court on November the 9th, 2018,

that the

11 school board was responsible for paying me, and
that the

12 school board's an entity.

13 So, we are here to deal with an issue
14 because she is asking for a special pleading because
she
15 wants to rehear -- she wants the Court to re
entertain

16 the matter on the sovereign immunity for which she
17 already awarded a motion against me in this case on
18 sovereign immunity, and it was already determined
that

19 the school board was not immune, and it didn't have
20 sovereign immunity.

21 In addition to that, we are also here on
22 the grounds that Ms. York does not want evidence
to be

1 entered into the record that would impeach
2 everything
3 that she and her client has said and put before the
4 Court, because she has engaged in practice saying
5 that
6 the work was not beneficial. She said it was not
7 used,
8 and the school board retains the information and has
9 been
10 over a year.

11 And so she wants to -- she wants to try not
12 to introduce evidence, but I have evidence to be
13 introduced into the record that would impeach what
14 she
15 and the school board has placed on file that can
16 substantiate the usage of the product, the benefits of
17 the work and counteract everything that Ms. York
18 has put
19 before the Court.

14 THE COURT: Is there a trial date set for
15 this?

16 DR. CRAWFORD: A trial date is set for July
17 the 9th, but this is matter: The judge -- the Court has
18 already determined --

19 THE COURT: Today is not July 9th. So
20 those issues would be thrashed out then.

21 DR. CRAWFORD: If I may bring the Court up
22 to par about what was taken place from January the
10th,

1 2019 hearing, it was determined I had the right as
the
2 plaintiff to reduce my motion for summary judgment
3 provided that there was no new issues that challenge or
4 came out of the material facts through discovery.

6 And so now Ms. York is trying to ask a
7 special pleading, and she's coming on the back door to
7 try to counteract what the Court --

8 THE COURT: Well, she said she has a

9 dispositive motion. You know, there's two sides of a
10 case. I have to hear this to see what the case is
about.

11 DR. CRAWFORD: I get that, and I do respect
12 that, but this is my case.

13 THE COURT: Mm-hmm.

14 DR. CRAWFORD: She is constantly taking the
15 ball and deciding what dictates and what happened.

And

16 at this point in time I'm requesting, and I'm praying
on

17 the Court to hear what I'm saying and understand
my

18 position, because at this point in time I would like
to,

19 first and foremost, bring forth the evidence to this
case

20 that was determined --

21 THE COURT: The evidence has to be brought
22 forth on the 9th of July.

1 DR. CRAWFORD: I filed a motion to be heard
3 today to introduce evidence into the record, and Ms. York
3 filed in opposition in reference to that.

4 THE COURT: Well, the evidence to be
5 introduced on the record would be made at trial, not
6 today.

7 DR. CRAWFORD: Your Honor --

8 THE COURT: Today is not set for trial.

9 DR. CRAWFORD: Your Honor --

10 THE COURT: This is pretrial motions, pre,
11 trial motions. So she has a right to her view that her
12 motion is dispositive, and it may or may not be. I
13 haven't heard it.

14 DR. CRAWFORD: I get that.

15 THE COURT: Sit down, Ms. Crawford.

16 Go ahead, ma'am.

17 MS. YORK: Good morning, Your Honor. We've
18 been before the Court on several occasions. The
basic

19 facts, to bring Your Honor up to speed, there was a
due

20 process hearing back, I believe, in December of
2016.

21 The hearing officer ordered that Dr. Crawford --

22 THE COURT: What do you mean, there was

1 some sort of administrative hearing?

2 MS. YORK: Yes, dealing with an IEP with a
3 student. So there was a due process hearing --

4 THE COURT: What's an IEP?

5 MS. YORK: Individualized education plan
6 for a special education, Your Honor.

7 THE COURT: All right.

8 MS. YORK: So, there was a due process
9 hearing, and the hearing officer ordered Dr.

Crawford to

10 perform what's called a functional behavioral
assessment.

11 Sometimes we refer to it as a FBA. It's an

assessment of

12 a student which -- placed into the IEP process.

13 THE COURT: All right.

14 MS. YORK: So Dr. Crawford performed that.

15 THE COURT: I see. The IEP stands for what

16 again?

17 MS. YORK: Individualized education plan.

18 THE COURT: Okay. All right.

19 MS. YORK: Dr. Crawford was ordered to

20 perform a functional behavior assessment, an FBA

as part

21 of that due process hearing.

22 THE COURT: Mm-hmm.

9

1 MS. YORK: And Dr. Crawford submitted a

2 work product in March of 2000 - I'm sorry. That was

3 December of '17. March of '18 she submits the work

4 product to the school board --

5 THE COURT: Mm-hmm.

6 MS. YORK: -- along with an invoice for

7 over \$26,000.

8 THE COURT: That's why the plaintiff
9 brought the suit.

10 MS. YORK: Yes, Your Honor.

11 THE COURT: To get her money.

12 MS. YORK: Yes. So the school board
13 typically pays between \$2,000 and \$4,000 for a
functional

14 behavior assessment.

15 THE COURT: Okay.

16 MS. YORK: Dr. Crawford's \$26,000 bill was
17 quite a surprise. So the parties attempted to
negotiate

18 and work out an agreement.

19 THE COURT: Mm-hmm.

20 MS. YORK: Ultimately they were unable to,
21 and that's where the lawsuit comes in.

22 Under Federal education law, the functional

2 expense. However, that doesn't provide unfettered

free

3 range as to what you are going to charge, and the

amount

4 that was going --

5 THE COURT: You can't charge a million

6 dollars.

7 MS. YORK: Correct, Your Honor. I mean, at

8 \$26,000 we are verging on a teacher's salary, pretty

9 close to it.

10 DR. CRAWFORD: I object to what she is

11 saying.

12 THE COURT: Won't all this -- be quiet, ma'am

13 I can't hear her if you keep interrupting me or

14 her. And you'll have an opportunity to speak.

15 Won't all this be thrashed out at the trial

16 on July 9th?

17 MS. YORK: Well, so, Your Honor, I was

18 bringing you up to speed.

19 THE COURT: Right.

20 MS. YORK: So, there is no contract between
21 the school board and Dr. Crawford.

22 THE COURT: Oh.

11

1 MS. YORK: So her claim is one for quantum
2 meruit.

3 THE COURT: How can there not be a
4 contract?

5 MS. YORK: There was no contract. The
6 hearing officer ordered --

7 THE COURT: What do you mean there is no
8 contract? She agreed to provide the service. She
9 provided it.

10 MS. YORK: The hearing officer ordered her
11 to provide the service. The school board did not

enter

12 into a contract with her. There was no agreement as
to

13 the rates that were going to be charged, the hours
going

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14 to be spent. No contract - and she's admitted there is

15 no contract.

16 THE COURT: Well, what's the position of

17 hearing officer? You said the hearing officer

ordered

18 this assessment.

19 MS. YORK: Correct, Your Honor.

20 THE COURT: So people don't work for

21 nothing, right?

22 MS. YORK: Correct, Your Honor. However,

12

1 so, the parties have all agreed, and Judge Hairston

found

2 that this is a claim for quantum meruit.

3 THE COURT: He did. All right.

4 MS. YORK: So, it's a claim for quantum

5 meruit. When we were here in January, Dr.

Crawford had

6 filed a motion for summary judgment. In opposition to

7 that Motion for Summary Judgment I raised an issue of

8 sovereign immunity. Judge Hairston heard
argument on it

9 but did not rule on the sovereign immunity argument
10 because we had not filed a special plea.

11 So in his order of February 2019 it
12 specifically says the Court is not ruling on the plea
of

13 -- on sovereign immunity because no plea has been
filed.

14 And now I've filed a special plea of sovereign
immunity,

15 and that's before the Court today.

16 THE COURT: Why is the school board immune
17 from a -- from sitting on a claim like this?

18 MS. YORK: So, the Supreme Court of
19 Virginia has held that municipal corporations,
which the

20 school board is a recognized municipal corporation
21 performing governmental functions -- school board
only

22 performs governmental functions -- are immune

From

13

1 quantum meruit claims. The Supreme Court of

Virginia

2 said that.

3 THE COURT: Where?

4 MS. YORK: Jean Moreau & Associates, Inc.

5 versus Health Center Commission Ex Rel, County of

6 Chesterfield, 283 Virginia 128, 2012.

7 THE COURT: Hmm.

8 MS. YORK: So we have a governmental

9 entity, the school board, performing governmental

10 function.

11 THE COURT: So, you can't bring a claim on

12 quantum meruit against the school board, according

to the

13 Supreme Court?

14 MS. YORK: Correct, Your Honor, nor could

15 you bring a claim of quantum meruit against the

16 Commonwealth. We had another case that we cited

in

17 pleadings involving Spotsylvania County. Counties

aren't

18 subject to the governmental proprietary distinction.

19 Counties are absolutely immune. So, there was no

quantum

20 meruit claim there.

21 So, there is sovereign immunity for a

22 quantum meruit claim when you are performing

Governmental

14

1 function. School boards only perform governmental

2 functions.

3 THE COURT: Mm-hmm.

4 MS. YORK: So, we have a quantum meruit

5 claim, a governmental function, and so we are

entitled to

6 sovereign immunity which would dispose of the

case.

7 THE COURT: Mm-hmm.

8 MS. YORK: Dr. Crawford's opposition to my
9 opposition of sovereign immunity is based on
waiver,

10 because her argument is that we are argued this
back in

11 January.

12 However, as I explained to Your Honor,
13 Judge Hairston-the Court specifically did not rule on
14 the sovereign immunity issue because no special
plea had

15 been filed. And that's specifically laid out in the
16 Court's order of, I believe it's February 10th, 2019.

17 THE COURT: Do you have that order?

18 MS. YORK: I don't have the order with me,
19 but I have the language from the Court's order
which says

20 --

21 THE COURT: Please get that order. I want
22 to see what it says. You know, the Court speaks –

1 here's the order.

2 MS. YORK: It's on page 5, Your Honor.

3 (Brief pause)

4 THE COURT: It's on page 5?

5 MS. YORK: Yes, Your Honor.

6 THE COURT: Lastly, the Court notes that

7 the school board raised the issue of sovereign

immunity

8 in its opposition. However, the school board has not

9 raised sovereign immunity through a plea of its own

10 because the Court denied plaintiff's motion for

summary

11 judgment on grounds. You need not address the

order of

12 sovereign immunity.

13 But I thought you said --

14 MS. YORK: So the Court did not --

15 THE COURT: The Court otherwise finds this

16 is a quantum meruit case.

17 MS. YORK: Earlier in the opinion, Your

18 Honor.

19 THE COURT: Okay. Let me see. Quantum

20 meruit based... I see. Plaintiff does not allege the --

21 therefore, take back -- court notes -- contract was

born

22 -- defendant argued there is no contract. Defendant

16

1 claims sound -- solely in quantum meruit. But did

the

2 Court ever find that this is a quantum meruit case?

Did

3 it say that?

4 MS. YORK: The analysis then proceeded

5 through quantum meruit and said that the plaintiff

could

6 resubmit a motion for summary judgment on

quantum meruit

7 if there were no material facts in dispute. So, the

8 Court's understanding seems to be that that is a

quantum

9 meruit claim.

10 THE COURT: Oh. (Brief pause) Well, it

12 said the Court will assume, without deciding, that

the

12 functional behavioral assessment was the benefit

13 conferred on the school board, and the school board

was

14 aware that plaintiff was ordered to complete the

thing --

15 the --

16 MS. YORK: Two of the elements or an

17 element of the quantum meruit analysis.

18 THE COURT: Yeah, but he -- it looks like

19 he analyzed what quantum meruit is, but he didn't

make a

20 finding that it was a quantum meruit case. Did he?

It

21 says the Court will assume without deciding.

22 MS. YORK: That's with respect to the

1 element of quantum meruit analysis.

2 THE COURT: Well, it says, yeah, well,

3 benefit. Well, you have to have a benefit in a

quantum

4 meruit case.

5 MS. YORK: Yes, Your Honor. And when

6 plaintiff had resubmitted her motion for summary

7 judgment, and it's been under the basis of quantum

7 meruit, the parties have been proceeding as though

it's a

9 quantum meruit.

10 THE COURT: I'm talking about what the

11 Judge decided. The Judge didn't decide this was a

12 quantum meruit case by this. Did he?

13 MS. YORK: There is no -- so, we have to

14 look at what's being alleged in the complaint. The

15 parties have not contested the fact there was no

16 contract. Dr. Crawford has agreed that there was no

17 contract in the pleadings before the Court. So if

there

18 is no contract, the analysis has to fall under

quantum

19 meruit. So there is nothing else for it to be.

20 THE COURT: Quantum meruit is a contract.

21 MS. YORK: It's implied.

22 THE COURT: That's a contract, right?

18

1 MS. YORK: Correct, but the parties agree

2 there was no written, there is no verbal contract.

3 THE COURT: If I tell you I'm going to go

4 to Alaska and to cut my grass, all right, will you cut

my

5 grass? I'm going to Alaska. Will you cut my grass? You

6 say, yeah. I go to Alaska. Come back. My grass is

cut.

7 We have a contract, but we don't have a meeting of

the

8 minds as to what the compensation should be. But

the

9 law, as I understand it -- let me see. Let me see. It's
10 an implied contract. It's a contract in the law, isn't
11 it?

12 MS. YORK: That's what quantum meruit is.

13 THE COURT: Right.

14 MS. YORK: And the Supreme Court of
15 Virginia said that there's sovereign immunity for a
claim

16 of quantum meruit.

17 THE COURT: Yeah, but you just said that
18 the Court ruled there is a case of quantum meruit.

What

19 I just read is that the Court will assume, without
20 deciding, that the function was a benefit –
regardless

21 - apparently inappropriate as a third element. So, he
22 didn't find all the elements were in place for
quantum

19

1 meruit.

2 MS. YORK: That was on her motion for

3 summary judgment. So he's analyzing whether she

has met

4 the burden to sustain a motion for summary

judgment on

5 the quantum meruit claim.

6 THE COURT: But you started your comments,

7 let me see, you started your comments by saying the

Court

8 has already found --

9 MS. YORK: And I apologize if I overstated

10 that --

11 THE COURT: Right.

12 MS. YORK: My reading of the Court's order

13 was that we were moving forward as a quantum

meruit claim

14 since he, Judge Hairston, acknowledged there was

no

15 contract.

16 THE COURT: I think you mis-read this, from

17 my examination of it. So if the Judge didn't decide

this

18 as a quantum meruit contract, and let's assume that

the

19 plaintiff is alleging that, you say that she is cut off

20 by a sovereign immunity.

21 MS. YORK: Correct, Your Honor. From the

22 Supreme Court of Virginia has held there is

sovereign

20

1 immunity for quantum meruit claims.

2 THE COURT: Do you have that case?

3 MS. YORK: I don't have the case with me.

4 I just have the cites, Your Honor.

5 THE COURT: Okay. But they specifically

6 held that a quantum meruit claim is does not ally

against

7 a school board or --

8 MS. YORK: Correct. The quote from the

9 case, Your Honor, is municipal corporations

performing

10 governmental functions are immune from quantum

meruit

11 claims.

12 THE COURT: All right.

13 MS. YORK: I don't know how much more clear

14 it could be.

15 THE COURT: All right.

16 MS. YORK: And that --

17 THE COURT: So, you are saying that, if

18 this is a quantum meruit claim, it can't survive a

19 pleading?

20 MS. YORK: Correct, Your Honor.

21 THE COURT: All right. I guess you are

22 saying that there is nothing else it could be. Because

21

1 you keep saying there is no contract, you mean there is

2 no physical writing, there is no signed written
contract?

3 MS. YORK: Correct, Your Honor.

4 THE COURT: Because in my example of going
5 to Alaska to cut my grass, there is no contract.

6 MS. YORK: Oral contract, but here there is

7 no oral contract between the school board and Dr.

8 Crawford. Dr. Crawford -- the school board didn't

engage

9 Dr. Crawford to perform --

10 THE COURT: What's the position of the

11 hearing officer?

12 MS. YORK: The hearing officer is an

13 independent hearing officer.

14 THE COURT: So, the hearing officer can go

15 off say, look, do the study, Dr. Crawford, and she

can't

16 expect to be compensated for it?

17 MS. YORK: I didn't say she couldn't expect

18 to be compensated for. The problem is -- this all

19 could have been avoided if the invoice submitted

was

20 reasonable, your Honor. Then we wouldn't be here.

21 THE COURT: So the school board is ready to

22 pay, but only a reasonable --

1 MS. YORK: Reasonable figure, yes, Your
2 Honor.

3 THE COURT: But that's just a concession.
4 There's not an agreement that there was a contract,
5 right?

6 MS. YORK: Correct.

7 THE COURT: But otherwise it could take the
8 position that she is due no money.

9 MS. YORK: Correct, Your Honor, because of
10 the quantum meruit issue. And Judge Hairston
raised

11 concerns about, you know, implications this has
going

12 forward, but the Virginia Procurement Act requires--

13 THE COURT: Well, how is a hearing officer
14 in this setting situated to order a study to be done,
and

15 the provider, Ms. -- Dr. Crawford here can't expect
to be

16 paid?

17 MS. YORK: She is expected to be paid a
18 reasonable sum.

19 THE COURT: No, but you just said she is
20 not entitled to be compensation to anything, and
that the

21 payment of any reasonable sum would be a
concession
22 right?

23

1 MS. YORK: Your Honor, the Federal special
2 education laws require the assessment to be done at
the
3 public expense.

4 THE COURT: Okay.

5 MS. YORK: However, the United States
6 Department of Education has consistently held that
public

7 entities are not required to pay exorbitant sums, and
8 that's what we have here. So, under the natural course

9 of things, the lack of a contract wouldn't have been

an

10 issue, because an invoice would have been

submitted for a

11 reasonable sum. As I mentioned, the school board

12 typically pays between 2,000 and \$4,000, and it

would

13 have been paid.

14 THE COURT: Well, the Federal law says you

15 -- compensation should only be at a reasonable

level; is

16 that right?

17 MS. YORK: The United States Department of

18 Education is who sets out the regulations.

19 THE COURT: The regulations say only pay

20 that which is reasonable.

21 MS. YORK: Correct.

22 THE COURT: Isn't that a factual

1 determination that would be due at trial?

2 MS. YORK: That would be an issue for

3 trial, but here, because we are dealing with the

quantum

4 merit claim, there is no contract between the parties,

5 and everyone agrees to that. So that it could only be a

6 quantum meruit.

7 THE COURT: It bothers me that she doesn't

7 have a remedy, though. If you take that position, she is

9 not to be compensated for what she did?

10 MS. YORK: I don't make the law. I mean,

11 take that up with the Supreme Court.

12 THE COURT: I know.

13 MS. YORK: Hard facts make bad law. And,

14 unfortunately, the law is what the law is. That's

why we

15 are here and faced with it.

16 THE COURT: Because of the quantum meruit,

17 the quantum meruit claim as interpreted, she is out

of

18 luck?

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19 MS. YORK: Correct, Your Honor. Do you

20 want to address each motion by itself?

21 THE COURT: Yes. What was the other

22 dispositive motion

25

1 MS. YORK: We have a motion to dismiss or,

2 in the alternative, motion to compel for continued

3 failure to respond to discovery.

4 THE COURT: That's a discovery issue.

5 MS. YORK: Yes, Your Honor.

6 THE COURT: All right. All right. Well,

7 let me hear from the plaintiff. Dr. Crawford, you are

8 interested in getting paid; is that correct?

9 DR. CRAWFORD: Yes, sir.

10 THE COURT: What is your area of expertise?

11 DR. CRAWFORD: Good morning. Judge Hughes,

12 can I take this out of my mouth, please?

13 THE COURT: Yes.

14 DR. CRAWFORD: I come before you as a

15 educational consultant with specialization in special

APP. 52

16 education leadership when it comes to policy and
17 regulations governing special education in the
United
18 States.

19 THE COURT: Okay.

20 DR. CRAWFORD: Okay. To address --

21 THE COURT: What is your academic
22 background?

26

1 DR. CRAWFORD: I have a Ph.D. in special
2 education. I have an MS in interdisciplinary studies,
3 which consists of mathematics, science and
technology. I
4 have an MED in curriculum instruction with
specialization
5 in science and Special Ed. I have BS degree in
biology
6 education.

7 THE COURT: Okay.

8 DR. CRAWFORD: I have over 29 years in

9 educational experiences. I am currently an adjunct

10 professor for Avery University developing and

creating

11 special education courses as well as instructing

them.

12 I have actually co-written the special

13 education guidance document for the State of

Virginia,

14 which has been used since 2011, since the onset of

it.

15 THE COURT: Mm-hmm. All right. So you've

16 provided this functional behavioral assessment?

17 DR. CRAWFORD: Yes, Your Honor. The

18 hearing officer ordered two evaluations. That's

what the

19 defendant counsel is not acknowledging. He

ordered a

20 functional behavior assessment and observations.

21 When you look at special education, when it

22 comes to evaluating students for services or to --or a

- 1 suspected disability, the functional behavior assessment
- 2 is designed to determine how the student's disability
- 3 impedes the student's ability to access the general
- 4 education curriculum while in the classroom setting,
- 5 outside the classroom setting. There can be some trauma
- 6 related, anything that impedes that.

- 7 And there is also, when you look at the
- 8 tiers of evaluation, the State of Virginia has also
- 9 listed observations, because observation can be done in
- 10 isolation of a functional behavior assessment, and
- 11 what

12 -- and although you do have observations included in a

- 11 functional behavioral assessment, the hearing
- officer

12 ordered the FBA as well as observation. So, he

ordered

14 two forms of evaluations to take place.

15 And what has happened in this process, it

16 was understood, as Ms. York said, the school

district

17 would pay the fees and services, and it's already

been

18 entered into the record.

19 THE COURT: How was that understood?

20 DR. CRAWFORD: Because under IDA, Your

21 Honor, if I may provide this to the Court --

22 THE COURT: Mm-hmm.

28

1 MS. YORK: -- within length, because I have

2 given a notice to the court of IDA.

3 THE COURT: Are you familiar with this

4 material?

5 MS. YORK: I'm not sure what she is

6 referring to.

7 DR. CRAWFORD: I will give a copy to the

8 Court and a copy to Ms. York. On -- I provided

9 notification to the Court, and I put a notice, and I

10 provided -- entered into the record already about

IDEA and

11 conducting evaluations.

12 And the only thing the Federal regulations

13 indicate is that AN evaluator must not be an entity

or an

14 employee of the school board, and the evaluator

must

15 carry and sustain the same credentials as minimal as

16 those would normally carry out these duties on
behalf of

17 the student and the school board.

18 THE COURT: Mm-hmm.

19 DR. CRAWFORD: What has happened in this

20 case, in retrospect to what Ms. York has said, I am a

21 educational consultant, and I was ordered to do this

as a

22 consultant.

1 THE COURT: Mm-hmm.

2 DR. CRAWFORD: I have --

3 THE COURT: Let me ask you this: How did
4 that come about? You weren't physically there at the
5 hearing.

6 DR. CRAWFORD: I was actually at the
7 hearing.

8 THE COURT: You were present at the
9 hearing?

10 DR. CRAWFORD: Yes, sir.

11 THE COURT: And he said, you do this?

12 DR. CRAWFORD: Yes. This is what happened,
13 Your Honor: I was there as an expert witness.

They

14 deemed me to be an expert witness in special
education

15 and in IDA when --

16 THE COURT: Who engaged you to be there as
17 an expert? Who asked you to come there?

18 DR. CRAWFORD: The advocate that was
19 representing the child and the family had me

subpoenaed.

20 I didn't volunteer to go. I was subpoenaed there.

21 THE COURT: Okay.

22 DR. CRAWFORD: During that process, my

30

1 credentials and findings and everything about me

was

2 vetted not only before the hearing officer, but before

3 the attorney that was representing the school board

at

4 the time and the director of special education.

5 THE COURT: So you were there at the

6 instance of the child or the child's parents or --

7 DR. CRAWFORD: Yes.

8 THE COURT: The school board didn't ask you

9 to come.

10 DR. CRAWFORD: Yes, sir. That's correct.

11 THE COURT: Okay. All right.

12 DR. CRAWFORD: So during that --

13 THE COURT: Go ahead.

14 DR. CRAWFORD: During that process, Your
15 Honor, after they vetted my credentials, the hearing
16 officer determined that I was truly an expert in the
17 field of special education and the regulations
governing

18 the education of children with disabilities.

19 THE COURT: Mm-hmm.

20 DR. CRAWFORD: When the parent requested
21 independent evaluation be conducted on behalf of
her
22 child, the school board -- the hearing officer asked
the

31

1 director of special education for the school board, as
2 well as the attorney that was representing the school
3 board of evaluators, because of the advocate that
was
4 representing the parent had requested that I do it.

5 THE COURT: Mm-hmm.

6 DR. CRAWFORD: And one of the issues that

7 came about in that process was that the -- because I
8 testified on behalf of the child.

9 THE COURT: Mm-hmm.

10 DR. CRAWFORD: And the hearing officer
11 responded in retrospect and requested a list of
12 independent evaluators. And, at that time, it was
13 determined that the school board did not have any
other
14 independent evaluators to carry out that function.

So

15 the hearing officer said, Dr. Crawford, you carry out
16 this function.

17 THE COURT: All right.

18 DR. CRAWFORD: That's how it came about.

19 THE COURT: Okay.

20 DR. CRAWFORD: So they did have an
21 opportunity to present someone else.

22 THE COURT: Mm-hmm.

1 DR. CRAWFORD: And just to give the Court a

2 little understanding of what has happened here, I'm a
3 registered vendor of the school board.

4 THE COURT: Mm-hmm.

5 DR. CRAWFORD: The school board has vetted
6 me my credentials, my business license and my fees.

7 THE COURT: So you are on the list.

8 DR. CRAWFORD: Yes. And they have all of
9 my professional fees.

10 THE COURT: Have you been utilized before?

11 DR. CRAWFORD: I have been utilized in
12 other areas in other school districts, but since this
13 case has come to court, during the midst of this case the
14 school board has retained my services multiple

times --

15 THE COURT: Mm-hmm.

16 DR. CRAWFORD: -- since then. So, after
17 this bill was submitted, I've carried out other duties,
18 and I've actually entered into the record verification
of
19 canceled checks and based on contracts returns and

20 agreements and things that we have come to.

21 THE COURT: Right.

22 DR. CRAWFORD: But when I was ordered to do

33

1 this, the school board had documentation of my fees,
2 because I'm consultant, an educational consultant.

3 THE COURT: Mm-hmm.

4 DR. CRAWFORD: So my fees not going to be
5 like a behavior therapy or psychologist. These are
6 different entities.

7 THE COURT: Mm-hmm.

8 DR. CRAWFORD: So there was never an issue
9 about that I received a protocol for carrying out
these

10 assessments.

11 THE COURT: Mm-hmm.

12 DR. CRAWFORD: I signed off on everything
13 that the school board has presented to me through
their
14 agent.

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15 THE COURT: Mm-hmm.

16 DR. CRAWFORD: The agents of the school

17 board had already -- and it's into the record, and Ms.

18 York has a copy, but I have extra copies to give the

19 Court and to make sure Ms. York has it. The school

board

20 already scheduled me into the school site for 25

hours.

21 THE COURT: Mm-hmm.

22 DR. CRAWFORD: And so, as a consultant, you

34

1 know, I make far more than that when I'm acting in a

2 consultant capacity.

3 THE COURT: Mm-hmm.

4 DR. CRAWFORD: You know.

5 THE COURT: Have you seen this material,

6 Ms. York?

7 MS. YORK: I don't know what was just

8 handed to the Court.

9 DR. CRAWFORD: A copy of it.

10 THE COURT: They're three copies of same
11 thing.

12 DR. CRAWFORD: Right. Yes, sir.

13 THE COURT: Pass that to her.

14 DR. CRAWFORD: So there were a multitude of
15 things that were done.

16 THE COURT: Mm-hmm.

17 DR. CRAWFORD: During this process the
18 school board provided supervision through two
19 psychologists that was with me the entire time when I
was

20 --

21 THE COURT: In this case here?

22 DR. CRAWFORD: Yes.

35

1 THE COURT: Not in a later case?

2 DR. CRAWFORD: No, not -- in this.

3 THE COURT: This FBA --

4 DR. CRAWFORD: And observation. The school
5 board gave me two supervising psychologists that

they

6 employed that sat with me the entire time I was in
the
7 school.

8 THE COURT: You worked along with them,
9 too?

10 DR. CRAWFORD: They observed me because
11 that's their protocol. When you are a independent
12 evaluator, they provide you with supervision. So
that

13 means that I cannot go into the classroom and do
my

14 duties unless they had a supervising person there
with

15 me. So, they supported the work.

16 THE COURT: Okay.

17 DR. CRAWFORD: And they had -- and so just
18 on the school sites alone, this student -- this student
19 attended two schools, the Thomas Jefferson High
School

20 and the Richmond Technical Center.

21 THE COURT: Mm-hmm.

22 DR. CRAWFORD: So I did everything under

36

1 the guidance and authorization of the agents
representing

2 the school board.

3 THE COURT: Mm-hmm.

4 DR. CRAWFORD: But no one ever challenged
5 my fees, and they were aware of my consulting fees.

They

6 had it on file. So -- and my fees are on eVA, the
7 Virginia procurement system. So, there was never a
8 challenge about that. So if you scheduled me to
come in

9 and work, I'm going to work.

10 THE COURT: Mm-hmm.

11 DR. CRAWFORD: Because I know I'm going to
12 get paid, and you are already aware of my fees. So,
when

13 you amass hours into the school, and knowing the
14 components of this process has to take place outside
of
15 the school --

16 THE COURT: Mm-hmm.

17 DR. CRAWFORD: -- you know, then you are
18 going to be accountable for those hours. And if
they

19 were concerned about trying to minimize the
expense of

20 it, they should not have scheduled me. I didn't just
up

21 and say, oh, I'm coming up in here and I'm going to
do
22 all this work like this. No. They gave me
schedules.

1 They gave me schedules and timeframes. They gave
me
2 supervision. They had me sign off on protocols.

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3 THE COURT: Mm-hmm.

4 DR. CRAWFORD: I did everything that the
5 agent for the school agent asked me to do. And so, at
6 that point it wasn't an issue.

7 THE COURT: So, at the point where the
8 hearing officer asked you to do this study, you then
9 proceeded to do it, but you did it in conjunction with
10 these people of the school board?

11 DR. CRAWFORD: Yes.

12 THE COURT: All right. Was there a time by
13 which you would have completed your work and
then you

14 would return to the hearing, or how did the hearing
end?

15 DR. CRAWFORD: I was not a part of the
15 ending phase of it, because that was something that
was

17 conducted after I submitted the report.

18 THE COURT: Right.

19 DR. CRAWFORD: The agent for the school

20 board, the parent, as well as the hearing officer
21 received a copy of the report. And the only thing he
22 needed to know from a perspective of me was that it was

38

1 carried out.

2 THE COURT: Mm-hmm.

3 DR. CRAWFORD: I did not appear.

4 THE COURT: So you made no further
5 appearances at the hearing.

6 DR. CRAWFORD: No. I did not.

7 THE COURT: You submitted your report.

8 DR. CRAWFORD: Yes.

9 THE COURT: Right.

10 DR. CRAWFORD: And then, after this report
11 was submitted, the director of special education, Dr.
12 Walker, requested an invoice, and I gave him an
invoice,

13 and it was itemized. And then he asked me if I
could

14 resubmit it with a line item invoice.

15 THE COURT: Mm-hmm.

16 DR. CRAWFORD: And I did that as well.

17 THE COURT: Mm-hmm.

18 DR. CRAWFORD: He asked for verification of

19 the hours. I provided the school board, the agent of

the

20 school board with the verification of hours, hours

that

21 were signed off by the parent and all of that.

22 THE COURT: Mm-hmm.

1 DR. CRAWFORD: I did everything. They

2 asked for copies of the document that I used during

the

3 process. I gave them copies of the everything.

4 Everything that was asked of me I complied with.

5 THE COURT: Mm-hmm.

6 DR. CRAWFORD: And I didn't fuss. I didn't

7 rave. I just said, okay. Even though we were trying to

8 get through this process of paying me, and as --it's in

9 the record --

10 THE COURT: Mm-hmm.

11 DR. CRAWFORD: -- I attempted to negotiate a
12 settlement, because my thing is to have a positive
13 working relationship and professional relationship.

14 THE COURT: Mm-hmm.

15 DR. CRAWFORD: And I was willing to accept
16 less than 50 percent, about 35 percent, 40 percent of the
17 total bill. And that's was when I was told that, hey,
18 we'll see you in court. And that's why I filed the --
19 that's why I came to this process of doing that. I
20 didn't do it to be indifferent.

21 And based on what Ms. York is saying, there
22 is nothing in the Federal language that talks about
the

40

1 cost except for when -- when an independent
evaluator
2 conducts an evaluation at the request of a parent.

And

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3 that means the evaluator would have already done

the

4 work, and a bill is submitted at that point. The

school

5 district reserves the right to take the matter before a

6 hearing officer to dispute the fees, but that's at the

7 beginning, and that's only if the parent had already

paid

8 for services, and then he or she is seeking

9 reimbursement. That is clear in the regulations.

10 THE COURT: Right.

11 DR. CRAWFORD: So Ms. York is sort of,

12 like, over-reaching in this process. And as it was

13 presented in the prior hearing, on the January 10,

2019

14 hearing, it was presented to the Court that under the-

15 because Ms. York, herself, on November the 9th,

2018,

16 advised the Court under Virginia Code 22.1-71 the

school

17 board is a corporate entity --

18 THE COURT: Right.

19 DR. CRAWFORD: Now, under the Virginia Code

20 it does also state that school boards can sue and be

sued

21 because they carried out corporate powers, because

22 although they carry out government duties, because

they

41

1 charge the general public and they receive a profit

from

2 the football games, dances, the use of their churches,

3 they're engaging in the private sector, which is the

4 corporate piece, and that would allow us to sue the

5 school district and the school -- I mean the school

6 board, and the school board can be sued. They can

sue.

7 And under eleven-fifty of the Virginia

8 Code, it is clear that -- and when we look at this,

when

9 we were talking about the -- when you look at

Lawyer

10 versus Chesterfield County School Board, (ph)

39CV76,

11 that was also a case where the school board was

sued and

12 had to pay for services.

13 THE COURT: Mm-hmm.

14 DR. CRAWFORD: Taylor versus The Vermont

15 Department of Education, 34CFR300.507d, and

that's -- all

16 this is governed under IDA and independent

evaluators.

17 Also, as -- and because there are no issues

18 about the material facts, and the material facts was I

19 was ordered to do the work. I performed a duty. It

was

20 already admitted and established that the school

board

21 was responsible for paying me --

22 THE COURT: Mm-hmm.

42

1 DR. CRAWFORD: So, under Anderson versus
2 Industry Viable, Inc. (ph), it says there are no issues
2 of the material facts. The material facts have not
been
4 challenged to this day or substantiated. And under
5 IDACFR300.502, the hearing officer has the duty
and the
6 authority to order. The Virginia Code 8.01-28, the
7 defendant admits that the plaintiff entitled to
judgment
8 may be taken by the plaintiff for the sum submitted
to be
9 due, case tried in residue.

10 Because the defendant agents requested a
11 bill, they had already admitted that they owed me
for the
12 services.

13 And what they are basically saying, we can

14 have any individual to carry out duties, and if we

don't

15 put something in writing, even though it is

understood

16 they would be paid, and we know we have to pay

them, we

17 can get work for free.

18 THE COURT: Mm-hmm.

19 DR. CRAWFORD: So, this is a debt

20 collection, Your Honor.

21 THE COURT: Yeah.

22 DR. CRAWFORD: And it's not what --

43

1 THE COURT: Didn't you tell me, though,

3 that you were brought to the hearing because the

parents

3 asked you to?

4 DR. CRAWFORD: No. The parent didn't ask

5 me. I was subpoenaed.

6 THE COURT: Oh, you were subpoenaed. By

7 whom?

8 DR. CRAWFORD: By the advocate that was

9 representing the parent.

10 THE COURT: I see.

11 DR. CRAWFORD: I didn't volunteer to show

12 up.

13 THE COURT: Yeah. You didn't decide get up

14 in the morning and decide to come to the hearing.

You

15 were there because there was a subpoena issued for

you.

16 DR. CRAWFORD: Yes, sir.

17 THE COURT: All right. And then the

18 hearing officer asked you to do this report?

19 DR. CRAWFORD: Yes, sir.

20 THE COURT: Did you provide a copy of the

21 report to the parents?

22 DR. CRAWFORD: Yes, sir.

1 THE COURT: And to the school board, as

2 well?

3 DR. CRAWFORD: The school board, the
4 hearing officer and advocate. I produced four
copies.

5 THE COURT: Well, Judge Hairston observes
6 in his order here -- if I can get this thing is working
7 -- while plaintiff states a compelling claim fo
quantum
8 meruit, summary judgment appropriate -- this is on
your
9 motion in January?

10 DR. CRAWFORD: Yes, sir.

11 THE COURT: Now, they are making a motion,
12 you see. The school board is making its motion for
13 summary judgment. And they claim that you
cannot make a

14 quantum meruit claim or you cannot make this
claim

15 against the school board. So, therefore, you are out
of

16 court, they say. That's what they say.

17 DR. CRAWFORD: Right. But under rule 3:20
18 of the Virginia Supreme Court, it talks about under
19 Andrews versus Ray (ph) that a summary judgment
can be

20 entered. And in matters such as this, because of the
21 fact that there is no dispute in the facts and that the
22 Court is not to use the amount in dispute, that's the

45

1 dollar amount of the bill of expense to determine the
2 case.

3 THE COURT: Mm-hmm.

4 DR. CRAWFORD: And that it can be a -- a
5 summary judgment can be entered into that, and
that's

6 what I used to bring about that.

7 THE COURT: Mm-hmm.

8 DR. CRAWFORD: So that's why, if I'm
9 understanding what's in the order, I had the authority to
10 bring it back in the event, because as you refer in it-

11 THE COURT: It was different then -- what's

12 different now for you then is -- was the case in

January.

13 DR. CRAWFORD: Well, if you look further

14 into the order, Your Honor, it was indicated because Ms.

15 York asked for discovery.

16 THE COURT: Okay.

17 DR. CRAWFORD: And, so, as you go along

18 into --

19 THE COURT: She has a discovery matter

20 today.

21 DR. CRAWFORD: Right. And I can address

22 that effectively once she presents her position. I'm

46

1 okay with addressing those matters.

2 THE COURT: All right.

3 DR. CRAWFORD: And so he -- it was also

4 determined that I could resubmit it.

5 THE COURT: Okay.

6 DR. CRAWFORD: And that's why I

APP. 81

7 re-submitted it, Your Honor.

8 THE COURT: All right. Well, thank you.

9 DR. CRAWFORD: Thank you.

10 THE COURT: Ms. York, of course we're here

11 on school board's motion on summary judgment.

12 MS. YORK: Yes.

13 THE COURT: I think the Court observed that

14 Ms. Crawford made a, quote, compelling claim, but

he

15 didn't make any finding that this is a quantum

meruit

16 claim, right? Going just from my reading of the

order

17 here. So, we haven't determined that--whether this is

18 a quantum meruit claim. But one question I have

for you.

19 What about the position of hearing officer here?

Can he

20 or she be deemed to be the agent of the school

board?

21 MS. YORK: He is independent, Your Honor.

22 So I think he can be deemed agent of either the
Student

47

1 or school board. They're both parties to an
2 administrative hearing process, and he's an
independent
3 third party.

4 THE COURT: What about Dr. Crawford's
5 recitation that included after she was appointed to do
6 the study she had to work along with school board
7 officials and get their, quote, unquote, approval to do
8 things. I say "approval" advisedly, but she did have her
9 work done in conjunction and in consultation with
prior

10 representation with school board officials to
compile and

11 complete the report.

12 MS. YORK: And I'm not in a position to
13 either ratify or disprove those facts, Your Honor.

APP. 83

14 THE COURT: Mm-hmm.

15 MS. YORK: But that still doesn't create a
16 contract.

17 THE COURT: Mm-hmm.

18 MS. YORK: For example, the Jean Moreau
19 case of the Supreme Court of Virginia said that
there is

20 sovereign immunity for a municipal corporation
performing

21 a governmental function. There was a case – you
had the

22 Chesterfield Health Commission in Chesterfield
County.

48

1 And they took over a nursing home facility, and they
2 expanded it to include assisted living. And, so, they
3 then wanted to expand it to provide independent
living.
4 And they entered into a contract with the plaintiff,
Jean

5 Moreau & Associates, to develop that independent
living

6 facility. And there were certain fees laid out in that
7 contract.

8 However, the contract also provided that
9 there was supposed to be a marketing fee that would
be --

10 and development fee that would be paid after
certain

11 milestones were met.

12 Well, the commission then voted to disband
13 the project. And, so, the plaintiff then sued to
recover

14 the unpaid fees. And there was a breach of contract
15 action for certain of the fees that were laid out, but
16 for those development and marketing fees, the
Supreme

17 Court of Virginia held those were a claim in
quantum

18 merit because there was -- all the contractual terms

19 were not laid out.

20 THE COURT: Mm-hmm.

21 MS. YORK: So there was a -- sovereign
22 immunity barred those claims. So, they even had a

49

1 contract that attempted to lay out part of the facts.

2 THE COURT: Right.

3 MS. YORK: Here we have nothing, Your
4 Honor.

5 THE COURT: Mm-hmm.

6 MS. YORK: So, this -- I believe this is a
7 quantum meruit claim. Judge Hairston analyzed it
under

8 quantum meruit after acknowledging that there was
no

9 written contract, and there was no agent to make an
oral

10 contract. So, there was -- running out of things that
11 this could possibly be. So, if there is no written
12 contract and no oral contract, it has to be quantum

13 meruit.

14 And because the school board's a

15 governmental entity performing a governmental
function,

16 it's entitled to the sovereign immunity.

17 THE COURT: Like I said, it bothers me that

18 she -- by your account, if she doesn't have it she is
out

19 of luck, right? Can't she have a claim against the
20 parents in any way? I don't know.

21 MS. YORK: I don't know, Your Honor. And
22 it's one of those situations where hard facts can

make

50

1 bad law. And the -- as you know, the Supreme

Court is

2 not often very clear, and we have a very clear
statement

3 of the position that sovereign immunity applies.

4 THE COURT: Well, you had a second motion.

5 By the way, you have six motions here?

6 MS. YORK: I only have two. Dr. Crawford

7 has four.

8 THE COURT: She has four. All right.

9 What's the other motion that has to do with
discovery?

10 MS. YORK: With discovery, Your Honor.

11 THE COURT: Well, what happened there?

12 MS. YORK: With discovery, we issued
13 interrogatories and requests for production to Dr.
14 Crawford, and she responded with objections to
each of

15 the interrogatories and requests for production and
did

16 not provide answer -- sometimes we'll object
subject to

17 the objection. Here's the answer, or here are the
18 documents.

19 THE COURT: Do you have a motion to compel?
20 MS. YORK: Well, we've started as motion to

21 dismiss, because under Rule 4:12 the Court has the
22 authority to dismiss a complaint when a party --

51

1 THE COURT: Do you have a case called -- I
2 always get it mixed up. Is it Brown versus Black or
3 Black versus -- what's the name of that case? Justice
4 Chief Justice Asell (ph) wrote the opinion. Brown
versus
5 Black or Brown versus Black. I get it mixed up.
But
6 unlike the Federal reports, which have discovery
rules
7 that are patterned under, the Court said, and I think
8 it's still good law, I have to check, you first have to
9 have an order compelling discovery before you can
move to
10 sanctions.

11 MS. YORK: It just changed last year, Your
12 Honor,

13 THE COURT: It just changed? Well...

14 MS. YORK: It did. And so now -- it used
15 to be that you would need a motion to compel and a
16 failure to comply with the order to compel.

17 THE COURT: What changed that?

18 MS. YORK: The court rules changed, Your
19 Honor. So, Rule 4:12d says, in relevant part, that if a
20 party fails to serve answers or objections to
21 interrogatories or to serve written request for --
22 written response for request for production, the

Court

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1 may make such motion -- or the court on motion
may make
2 such orders in regard to the failure as are just, and
may
3 --

4 THE COURT: That's what it's always said.

5 MS. YORK: And among others it may, without
7 prior entry of a Rule 4:12b order to compel
regarding

7 impose any sanctions listed in --

8 THE COURT: All right. Well, that would

9 change it.

10 MS. YORK: Yeah, so you can move directly

10 to those other. And here we are now a month from
trial,

11 Your Honor. I've had no discovery responses.

We've been

12 before the Court on several occasions on Dr.

Crawford's

14 motions, and I've answered discovery.

15 THE COURT: Mm-hmm.

16 MS. YORK: I can't even get basic discovery

17 responses. So we believe that dismissal would be an

18 appropriate sanction.

19 In the alternative, we would ask for a

19 order compelling full and complete responses and

answers

21 and continue the trial date because, obviously, if the

22 Court orders that Dr. Crawford provide answers and

1 responses, I'm now 30 days before trial. I don't have
2 any time to do anything with it. So we would need
the
3 trial date to be continued.

4 And, in our reply brief, we've laid out
5 each of the interrogatories and our requests and why
6 they're an appropriate discovery request and why the
7 information is necessary.

8 THE COURT: Can I see the language you just
9 read? I can't find a copy of the rule. When was that
10 amended? Do you know?

11 MS. YORK: I believe it became effective in
12 2018.

13 THE COURT: Well, I'm looking at something,
14 a book that's 2013. Well, does say without prior
entry

15 of a order of Rule 4:12b order to compel regarding
the
16 failure. That's a change.

17 You know, this -- the prior case has been
18 criticized. The prior court felt that criticism was
19 justified, because the Federal Court you can move
20 immediately to sanctions upon failure of this type.
21 Yeah, impose any sanctions -- without prior entry of
22 4:12b order.

54

1 MS. YORK: Going to need to get you an
2 updated rule book.

3 THE COURT: Looks like it. Well, I'm
4 retired. Yeah. Well, so, Dr. Crawford has not
5 responded. Well, she did respond. She lodged an
6 objection.

7 MS. YORK: She lodged objections. Didn't
8 provide any answers or responses, only objections.

9 THE COURT: Mm-hmm.

10 MS. YORK: The Rule 4:12 says that the
11 failure to act described in this aggravation (ph) may
not
be excused on the ground that the discovery sought
is

12 objectionable unless you applied for a protective

13 order.

14 There has been no application for protective order.

And

15 for the reasons that we've stated in the reply brief,

the

16 -- it's not actionable.

17 THE COURT: Doesn't the rule contemplate,

18 you know, that the person to whom the discovery is

20 directed does nothing? And as alluded, didn't she

file

20 an objection?

21 MS. YORK: She did file objections.

22 THE COURT: Yeah, but that's a response.

55

1 Should she be sanctioned even though she did

respond by

2 way of objection? She didn't just do nothing. She

3 didn't just let the paper lay there.

4 MS. YORK: Correct, Your honor, but when

APP. 94

5 the objection is without foundation and basis --

6 THE COURT: Wouldn't it be -- then wouldn't

8 the onus be on the school board on the motion to
compel

8 to move the objections be removed?

9 MS. YORK: That's what we've done, Your

9 Honor, as well. So, it's a motion to dismiss, or in
the

11 alternative to it compel and continue the trial date.

12 THE COURT: I see. Let me ask you, you

13 know, what are you seeking, I'm sorry, the -- on the
14 objections, why are they objectionable? How many

-- I've

15 asked two questions. How many objections are
there?

16 MS. YORK: She objected to every

17 interrogatory and every request for production.

18 THE COURT: How many of those are there?

19 MS. YORK: There are 13 interrogatories.

20 THE COURT: Okay.

21 MS. YORK: Fourteen requests for

22 production, and we are talking about --

56

1 THE COURT: There's an objection to each
2 one of them?

3 MS. YORK: Yes, state your name and your
4 address.

5 THE COURT: She objected to her name?

6 MS. YORK: Yes. Have you ever been
6 convicted of felony, misdemeanor or moral
turpitude, your

8 educational background, your employers, and then
10 information specific with respect to this, any
statements

11 the defendant made, persons with knowledge,
exhibits; I

11 mean, things I need to put on my case.

12 THE COURT: Well, kind of boiler plate

13 things lawyers ask for in discovery.

14 MS. YORK: Yes, Your Honor, which is why we
15 felt the motion to dismiss was appropriate because

these

16 weren't objectionable discovery requests.

17 THE COURT: Okay.

18 MS. YORK: So I'm happy to go through each
19 and every interrogatory if Your Honor wants.

20 THE COURT: Well, I got the flavor of what
21 you are talking about.

22 Well, let's hear from Dr. Crawford on this

57

1 one. Dr. Crawford, they said you filed these
objections

2 and they have no merit. You wouldn't – you
objected to

3 telling the people your name and your educational
4 background, which you just told me.

5 DR. CRAWFORD: Your Honor, under the facts
7 of discovery, this -- my name is not a discoverable
fact.

7 They have that information. If it's already in their
8 possession, and they have it in their possession, they

9 have my information verified.

10 THE COURT: Mm-hmm.

11 DR. CRAWFORD: The defendant -- the

12 counsel's defendants has emails that they have sent

me.

13 Why should I have to reproduce something that they

sent

14 out?

15 THE COURT: They don't know whether you

16 were ever convicted of a felony or crime involving

moral

17 turpitude under have a law.

18 DR. CRAWFORD: This is what's happening,

19 Your Honor: This is a debt collection. And what is

20 happening here, anything that is public record, that

21 means that the defense counsel has accessibility to

it,

22 and it's not discoverable. So, if I'd be arrested, been

1 convicted of a crime --

APP. 98

2 THE COURT: Mm-hmm, they can find that out.

3 DR. CRAWFORD: Yes. I don't have to
3 produce anything. So she is asking me to come up
with

5 things that either they have in their possession or are
6 in control of. My Curriculum Vitae, my resume,
they have

7 multitudes of that information. I used to work for
the

8 school board for Richmond City for 15 years. They have
9 my license and credentials. So, that means creating
what

10 you call a undue burden on me to produce things.

11 Ms. York has requested information that was

13 very vague. She asked for any and all information

that I
13 may have as it pertains to the school board.

14 I want the Court to understand I was born
15 and raised in Richmond City. That means I have on my
16 wall right now Early Childhood Head Start
certificate.

17 So, you are talking about almost 40-some years of
18 information.

19 My children have gone through the school
20 system.

21 She asked for any and everything that I
22 May have as it pertains. That's a vague, broad
thing,

59

1 and that's undue burden.

2 THE COURT: Aren't they entitled to know
3 what witnesses you may have, though?

4 DR. CRAWFORD: I explain -- I put in there
5 -- she asked for expert. She specifically said --
asked

6 for expert witnesses. And I indicated I do not have
7 information on the witnesses that I will call because
8 they are employees of the school board. I don't plan to
9 bring in no third-party individuals. I'm going to
make

10 my case and build my case under the art of
persuasion and

11 impeachment of everything that Ms. York has filed

with

12 this Court through the use of school board members-

13 THE COURT: Mm-hmm.

14 DR. CRAWFORD: -- and as well as the agents

15 that operate under the school board that had a direct

16 affiliation in this process. I'm not going to reach out

17 to any third party. And I made that clear to the

agents

18 I do not have that information.

19 THE COURT: What we -- this is -- discovery

20 rules are set to, you know, memorialize or put it

down in

21 writing what your positions are and for someone to

review

22 this case, the Supreme Court or anyone. The law

requires

1 a lot of paper stuff, you know, and responses so that

2 anyone viewing the case would know, and the other

side

3 can be advised in writing in paper, on paper what

your

4 position is. That's really what -- that's a practical

5 matter what we are talking about here.

6 DR. CRAWFORD: I respect that, Your Honor,

7 but what Ms. York has not told this Court today, is

that

8 they already got the information on the individuals I

9 intend to call, because actually went so far as to

squash

10 some subpoenas at the -- for the November 9th,

2018

11 hearing. So, she already knows who I'm going to

call.

12 I've given -- they have that information on who's

13 involved. And, so, it's like I'm constant going back,

14 Your Honor, redoing things. So what she wants to

do, and

15 this is what has happened, Your Honor, in this case. And

16 I apologize --

17 THE COURT: Excuse me. Okay. We have some

18 sort of emergency out in the hallway. We'll have to take

19 a recess.

20 (Whereupon a brief recess was taken.)

21 THE COURT: All right, ladies. I think you

22 had four motions. Did you complete your

argument? I

61

1 was hearing --

2 MS. YORK: You were hearing from Dr.

3 Crawford.

4 THE COURT: Your response to discovery

5 matter.

6 MS. YORK: Correct.

7 THE COURT: I'm going to ask her now.

What

8 -- you have four motions, Dr. Crawford?

9 DR. CRAWFORD: I had done two motions to

10 exclude experts that Ms. York has ordered in the

case.

11 Ms. York has brought on board a forensic clinical

12 psychologist with an expertise in drug and

substance

13 abuse. And this individual has no direct firsthand

14 knowledge of me --

15 THE COURT: Mm-hmm.

16 DR. CRAWFORD: -- my consultant fees, my

16 business, my affiliations. And she wants to bring

this

18 individual to challenge me for which -- one of the

19 issues, at first thought, she's provided confidential

20 information to a minor child, to a third party

without

21 the consent of a parent. And that, I have to protect

the

22 rights of that child.

62

1 The second issue is, according to her

2 filings, this person is going to testify to the mind set

3 of a hearing officer. This individual was never

present.

4 There is nothing in writing about the things that this
5 individual supposedly would come and testify about.

And

6 under IDA she also wants to have this individual
also
7 challenge my practices and evaluation process.

That's

8 just like saying that every doctor have to run the
same
9 test to find out why Tommy stomach hurts.

10 THE COURT: mm-hmm.

11 DR. CRAWFORD: And IDA has made that clear,
12 you know, you are not going to challenge the
evaluation

13 process, because no two expert carry the same
procedures

14 and practices. And she wants a psychologist to
challenge
15 an educational consultant. She wants a psychologist
to
16 challenge someone with a Ph.D. in education and

17 leadership. She wants a psychologist to tell me my
18 business. She wants a psychologist to jump into a
realm
19 that he had no firsthand knowledge of.

20 And the same thing applies with the social
21 worker, because those were the two motions that –
those

22 are two of the motions because, you know, the
mother is

63

1 very distorted about her child's information being
given
2 to third parties.
3 The functional behavior assessment, the
4 evaluation, the observation, all of those items, they
are
5 not even a part of the record. So I don't really know
6 what she is giving this gentleman or this young lady to
7 look at.
8 So she's asking people to come and testify

9 on something that is not even in the presence of the

10 Court to authenticate or review.

11 So -- and if Ms. York want a psychologist

12 to testify, two of them were with me during this

process

13 that are agents of the school board.

14 THE COURT: Mm-hmm.

15 DR. CRAWFORD: If she need a psychologist

16 to testify towards whatever is it I did, they have

17 firsthand knowledge of what I was doing.

18 THE COURT: Right.

19 DR. CRAWFORD: But she went and got someone

20 from Chesterfield and someone from Fredericksburg,

21 Virginia.

22 The school board has employees, a lot of

1 professional social workers. There was a social

worker

2 that was at the meeting when the evaluation product was

3 discussed and shared. So, that makes me very

suspect as

4 to what she's getting at, because you have these

entities

5 that are already under the auspice of the school

board,

6 but she is reaching out to retain services --

7 THE COURT: Is this case set for trial with

8 a jury?

9 DR. CRAWFORD: No. It's a judge, bench

10 trial.

11 THE COURT: Do you have a desire for a

12 jury?

13 MS. YORK: Neither party's asked for a

14 jury, Your Honor.

15 THE COURT: Okay. Is that it?

16 DR. CRAWFORD: Yes, Your Honor. As far as

17 stuff to compare, I did respond when she said I did

not

18 respond --

19 THE COURT: Yeah, she said you responded

20 with objections.

21 DR. CRAWFORD: Yeah, and I also gave

22 rational for it as well. That's not what she is telling

65

1 the Court.

2 THE COURT: That's the rational you were

3 telling me today.

4 DR. CRAWFORD: Yes. It does not challenge

5 material facts of the case. She's asked me

6 interrogatories that had nothing to do with this case.

7 You know, she asked me for information on who's

my

8 supervisor. And she is talking about elite education

9 consultant? I'm the owner.

10 THE COURT: Well, why don't you tell her

11 that on the paper?

12 DR. CRAWFORD: She knows that. I've

13 already provided --

14 THE COURT: I don't know that.

15 DR. CRAWFORD: You don't know that.

16 THE COURT: If I get here, and I open that

17 file, I'd like to see what --

18 DR. CRAWFORD: Right. Well, she has that.

19 She has copies of my professional --

20 THE COURT: Don't I have a right?

21 DR. CRAWFORD: You do have a right to know.

22 That's correct, Your Honor.

66

1 THE COURT: Thank you.

2 DR. CRAWFORD: You are absolutely correct.

3 But when she is asking -- what she is asking for

these

4 matters under discovery --

5 THE COURT: Right.

6 DR. CRAWFORD: -- if the defendant already

7 has their stuff in their possession, that's undue

burden

8 placed on me to go back and reproduce.

9 THE COURT: But, you know, in my

10 preparation to hear the case, I like to look at the file

11 and see what the parties' responses are to the
discovery,

12 to see what the issues are, and it will cut down a
little

13 judicial administration in part, because we got a lot
of

14 stuff going on around here.

15 DR. CRAWFORD: You are absolutely correct,

16 Your Honor, but I also indicated that she had things
in

17 her possession.

18 THE COURT: I understand.

19 DR. CRAWFORD: So it's not that -- I issued
20 a response, but it was a non-response response, and
I did

21 comply with the rules of the Court. And I just
didn't

22 ignore it. As a matter of fact, I initiated the process,

1 because Ms. York has been asking for this since

October,

2 November of last year and never proceeded to do
anything.

3 And, so, at this point to satisfy the issue
4 of discovery, I initiated the process after the Court
5 determined that it would allow her to have an
6 opportunity, because she did nothing.

7 THE COURT: Mm-hmm. Thank you. You got
8 something?

9 MS. WILLIAMS: I didn't know if you wanted
10 us to respond to her motion to exclude, Your Honor.

11 THE COURT: No, I do not. Is that all we
12 have on the able, Ms. York, today? We got a July 9
13 hearing.

14 MS. YORK: A July 9 bench trial.

15 DR. CRAWFORD: Motion to introduce. Said
16 you addressed that already, Your Honor.

17 THE COURT: I'm going to read the case
18 283.28.

19 MS. YORK: Jean Moreau case?

20 THE COURT: Is that the name of the case,
21 the one decided in 2012? You said it stands for the
22 proposition the school board can't be sued on
 quantum

68

1 meruit.

2 MS. YORK: Yes, Your Honor.

3 THE COURT: No claims under sovereign
4 immunity.

5 MS. YORK: 283 Virginia 128.

6 THE COURT: Let me ask you this: What
7 about -- she says -- I alluded to this earlier, she
8 worked along with school board officials to compile.
9 What about a waiver here? Is there any waiver
10 possibility here, waiving sovereign immunity
 defense?

11 MS. YORK: Sovereign immunity can't
12 generally be waived by statute, Your Honor.

13 THE COURT: Is that right? All right.
14 I'll take a look at the case, and I'll write you a brief

15 note and let you know what the outcome is. Thank
you.

16 MS. YORK: Thank you, Your Honor.

17 THE COURT: Thank you. Nice to see you.

18 DR. CRAWFORD: Thank you, Your Honor. And

19 I appreciate your time and effort, and I have
confidence

20 in the court's process.

21 THE COURT: Mm-hmm.

22 DR. CRAWFORD: Just to put it on the

69

1 record. But I also know this is the same case that
she

2 cited before, and that was work that was not
completed.

3 THE COURT: Right.

4 DR. CRAWFORD: In this case they got the
4 product and been keeping it in their possession for
over

5 a year, and they never attempted to return it. And

it's

7 over a year now. So, like I said, just like going --

8 THE COURT: I think I do have some concern

8 about expressing, I think, that people do work, they

need

9 to be compensated for it. People don't work for

free.

11 A PARENT: Your Honor, I'm the parent. May

12 I speak also?

13 THE COURT: No, ma'am. You are not a party

14 to the case.

15 A PARENT: That's fine.

16 THE COURT: All right. Thank you, ladies.

17 Thank you very much.

18 MS. YORK: Thank you. You have a nice day.

19 THE COURT: Thank you.

20 (Whereupon the proceedings concluded 10:30 a.m.)

21

22

1 COMMONWEALTH OF VIRGINIA AT LARGE:

2

3 I, THERESA J. PATA, a Court Reporter and Notary

3 Public for the Commonwealth of Virginia at Large,

do

5 certify that the foregoing is a true and accurate

6 transcript of the stenographic notes of the

proceedings

7 on the date and place hereinbefore set forth.

8 I FURTHER CERTIFY that I am neither attorney

10 nor counsel for, nor related to or employed by, any

of

10 the parties or attorneys to the action in which these

11 proceedings were taken, nor am I financially

interested

12 in this case.

13 I FURTHER CERTIFY that no exhibits were given

14 to me for safekeeping or to be submitted with the

15 transcript.

APP. 116

16 Given under my hand this 11th day of

17 December 2019.

18

19

20

 THERESA J. PATA
21 COURT REPORTER - NOTARY PUBLIC
21 Notary Registration #7244306

22 Expires July 31, 2021

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF
RICHMOND

3 CASE NO.: CL18004077-00

4

5 MARLA FAITH CRAWFORD, PH.D.,

6 Plaintiff

7 v.

8 RICHMOND CITY PUBLIC SCHOOLS, et al. :

9 Defendants

10

11

12 TRANSCRIPT OF HEARING BEFORE

13 THE HONORABLE MELVIN R. HUGHES,

JUDGE

14 Tuesday, July 9, 2019

15 9:27 a.m.

16

17

18 Job No.: 251074

19 Pages 1 - 10

20 Reported by: Lisa M. Blair, RMR, CRR

21

22

2

1 A P P E A R A N C E S

2 (Plaintiff, Dr. Marla Faith Crawford, Pro Se)

3

4 ON BEHALF OF DEFENDANT:

5 MELISSA Y. YORK, ESQUIRE

6 HARMAN, CLAYTOR, CORRIGAN &

WELLMAN, P.C.

7 4951 Lake Brook Drive, Suite 100

8 Glen Allen, Virginia 23060

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1 PROCEEDINGS

2 THE COURT: Ladies, was this the date

3 set for the trial in this case?

4 MS. YORK: Today was supposed to be the

5 bench trial, yes, Your Honor.

6 THE COURT: Really?

7 MS. YORK: And we were awaiting the

8 decisions.

9 THE COURT: I know.

10 MS. YORK: And I got your letter.

11 THE COURT: Yeah, I think I wrote a

12 letter after I conferred with Judge Hairston.

13 But as you may know, I'm involved with a

14 multi-day trial here starting yesterday. And

15 there's a problem with a juror or something.

16 We're trying to clear that up now.

17 But in my letter, I think I

18 expressed the idea that we ought to have a

19 pretrial conference.

20 MS. CRAWFORD: Yes.

21 THE COURT: And then someone filed an

22 order -- or a motion for a pretrial conference.

1 MS. YORK: Correct, Your Honor, I filed

2 a motion for a pretrial conference.

3 THE COURT: I was just wondering if you

4 folks can settle this case. It seems to me

5 that the case ought to be resolved. It's going

6 to take a lot of time and effort to try the

7 case. There's some significant legal issues in

8 the case, Ms. Crawford, that they have raised,

9 but I heard some expressions of interest in
10 maybe settling the case, despite the legal
11 issues you've raised. I think if I recall
12 correctly, Dr. Crawford mentioned that she
13 would take a lesser amount. I think you -- my
14 recollection was you were amenable to at least
15 considering a lesser amount, maybe not the
16 amount that she came to. Have you-all had any
17 mediation? I could order a pretrial settlement
18 with a judge.

19 MS. CRAWFORD: We were open to that, but
20 it never transpired. Nothing was ever done to
21 establish or set it up, because one of the
22 things that I want to do is I was put in a

5

1 situation to do 116 hours of work, and I do
2 want to be compensated for 116 hours. But I
3 do -- as I mentioned many times with her client
4 prior to her, you know, we've already come
5 to -- her client has already determined that at
6 a very minimum, they were willing to pay me

7 \$150 an hour. And I'm open to that, but I do
8 think that if I work 116 hours and they
9 facilitate it, I should get paid for that time
10 that they facilitated. And so -- but I have
11 gone into other agreements with her client at a
12 lesser hourly rate. And I'm open to that
13 hourly rate of 150. So I'm not -- I'm not
14 close-minded to it.

15 THE COURT: As you may know,
16 Ms. Crawford, and Ms. York, I'm retired. And
17 sometimes I'm not up with everything that's
18 going on here. I'm kind of in and out. But I
19 do mention -- I see that they -- the trial is
20 today, and I do have this motion under
21 advisement.

22 What about if -- would you-all be

1 amenable to having a judicial settlement? We
2 have retired judges who sit down with you who
3 will try -- at no expense, now --

4 MS. CRAWFORD: I'm open to it.

5 THE COURT: -- who will try to help you
6 come to an agreement.

7 MS. YORK: I would have to discuss it
8 with my client. We tried to negotiate in the
9 past and it has not been successful, Your

10 Honor.

11 THE COURT: Did you do it with --

12 MS. CRAWFORD: We did not do it with a
13 neutral third party.

14 THE COURT: Would you discuss that with
15 your client?

16 MS. YORK: I can discuss that with my
17 client.

18 THE COURT: I know some good people who
19 are retired judges who have a lot of experience
20 who can bring that experience to bear in
21 resolving problems with litigants like
22 yourself. Perhaps you could come to some kind

1 of mutually agreeable resolution of the matter.
2 I can't try the case today, unfortunately,
3 because I'm involved with this. I did discuss
4 this with Judge Hairston. I think he was the
5 judge --

6 MS. YORK: It's assigned to him,
7 correct.

8 THE COURT: It's assigned to him. And I
9 think we said that we would try to get together
10 with you today. I was hopeful this case would
11 go off, but, you know, hope springs eternal.

12 It just didn't happen. So would you talk to
13 your client about that and let me know?

14 MS. YORK: Yes, Your Honor.

15 THE COURT: And if they're agreeable, I
16 can enter an order. And I don't know if you
17 can suggest a judge, but the Supreme Court can
18 give us a judge.

19 MS. YORK: I think we get to pick a

20 judge --

21 THE COURT: You do? Okay.

22 MS. YORK: -- from the list. Yes, Your

1 Honor.

2 THE COURT: Well, let me know about

3 that.

4 MS. YORK: I have a meeting with the

5 School Board on Monday.

6 THE COURT: Okay. Great. We'll await

7 word on whether you're amenable, and we'll

8 await word from the defendant as to whether

9 they are from the School Board. Please tell

10 the School Board I think this is the most

11 appropriate way to try to handle something like

12 this, because she's raised some significant

13 legal issues. But I did see some suggestion

14 that perhaps you-all could come together to get

15 this resolved, because you may need to continue

16 to work with the School Board in the future.

17 MS. CRAWFORD: I have, sir.

18 THE COURT: And you have in the past.

19 MS. CRAWFORD: While this case has been

20 going on, they have been contracting me, and

21 I've been working with them --

22 THE COURT: Oh, really?

1 MS. CRAWFORD: -- throughout this whole
2 time.

3 THE COURT: This is the kind of
4 situation where mediation is the most
5 appropriate if you have a notion that there's
6 going to be a continuing relationship. And
7 maybe you can learn something from this as you
8 go forward.

9 MS. CRAWFORD: Yeah, I've been working
10 with them throughout this whole process. I've
11 done multiple things for them over the course
12 of the year.

13 THE COURT: Well, let me know, Ms. York.

14 I'll note on the docket the case is continued

15 generally.

16 MS. YORK: Okay.

17 THE COURT: And if we need to reset it,

18 we have to reset it.

19 MS. YORK: Okay. Thank you.

20 THE COURT: Thanks, ladies. Good to see

21 you.

22 (Off the record at 9:33 a.m.)

10

1 CERTIFICATE OF SHORTHAND REPORTER-

NOTARY PUBLIC

2 I,

3 LISA M. BLAIR, RMR, CRR, the officer before

whom

4 the foregoing proceeding was taken, do hereby

5 certify that the foregoing transcript is a true

6 and correct record of the proceeding; that said

7 proceeding was taken by me stenographically and

8 thereafter reduced to typewriting under my

APP. 128

9 direction; and that I am neither counsel for,
10 related to, nor employed by any of the parties to
11 this case and have no interest, financial or
12 otherwise, in its outcome.

13 IN

14 WITNESS WHEREOF, I have hereunto set my
hand and

15 affixed my notarial seal this 12th day of
16 April 2020.

17 My commission expires October 31, 2020.

18

19

20

21 _____

22 s/ Lisa M. Blair, RMR, CRR

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND

3 -----X

4 MARLA CRAWFORD, :

5 Plaintiff, : Case No.

6 v. : CL18004077-1

7 RICHMOND CITY PUBLIC SCHOOLS, :

8 Defendant. :

9 -----X

10 HEARING BEFORE THE HONORABLE

MELVIN HUGHES, JUDGE

11 Richmond, Virginia

12 Tuesday, December 17, 2019

13 9:26 a.m.

14

15

16

17

APP. 130

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20 Job No.: 295257

21 Pages 1 - 54

22 Transcribed by: Jackie Scheer

2

1 APPEARANCES

2

3 DR. MARLA CRAWFORD, Pro Se

4 Plaintiff

5

6

7 ON BEHALF OF THE DEFENDANT:

8 MELISSA Y. YORK, ESQUIRE

9 DAVID P. CORRIGAN, ESQUIRE

10 SIMONE T. WILLIAMS, ESQUIRE

11 Harman Claytor Corrigan &

12 Wellman, P.C.

13 4951 Lake Brook Drive, Suite 100

14 Glen Allen, Virginia 23060

15

16

17 ALSO PRESENT:

18 MACKENZIE CARLSSON, Reporter

19

20

21

22

3

1 C O N T E N T S

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5 By Ms. Williams 8, 15

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8 COURT'S RULING 52

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1 P R O C E E D I N G S

2 THE CLERK: Circuit Court, City of

3 Richmond is now in session with the Honorable Judge

4 Hughes presiding. You may be seated and come to

5 order.

6 THE COURT: Good morning.

7 MULTIPLE VOICES: Good morning.

8 THE COURT: All right. This is the

9 matter of Melissa York -- I'm sorry. Melissa York

10 is the attorney.

11 MS. YORK: Yes, Your Honor.

12 THE COURT: Crawford, Ms. Crawford. You
13 suing the Richmond Public Schools?

14 DR. CRAWFORD: Yes, sir.

15 THE COURT: This is the case we've had
16 some discussions about?

17 DR. CRAWFORD: Yes, sir.

18 MS. YORK: Yes, Your Honor --

19 THE COURT: -- motions and so forth,
20 right. But this is the day set for trial; is that
21 correct?

22 DR. CRAWFORD: Yes, sir.

1 THE COURT: All right.

2 MS. YORK: It is, Your Honor. I had some
3 housekeeping matters I would like to address with
4 the court if possible.

5 THE COURT: All right. What are they?

6 MS. YORK: We were here in June, Your
7 Honor, on five motions that the court took under

8 advisement, and those were the school board's plea
9 of sovereign immunity, the school board's motion to
10 dismiss, or in the alternative compel discovery
11 because Dr. Crawford -- Crawford had served
12 objections to discovery but not answers or
13 responses. And additionally, Dr. Crawford had two
14 motions, a motion for summary judgment and
motions
15 to strike my experts. And the court took those
16 matters under advisement. We are here today for
17 trial but for the purposes of having a complete
18 record, we would like the court to rule on at least
19 the school board's pending motions, and I'm happy
to
20 address further any of those issues.

21 Additionally, the school board has filed
22 motions to quash witness subpoenas, Your Honor.

1 Witness subpoenas were served on three individual
2 school board members as well as the school

3 superintendent, Mr. Kamras.

4 THE COURT: Were those matters raised in
5 June?

6 MS. YORK: No Your, Honor. Those came up
7 recently. And my colleague, Simone Williams, is
8 prepared to address those issues.

9 And additionally, I wanted to let the
10 court know that after today's proceedings we will be
11 moving forward with sanctions against Dr.

Crawford.

12 She filed a motion for sanctions against me
13 personally last December and Judge Hairston heard
14 that argument in January. She accused me of a
15 variety of things, including fraud in the court,
16 increasing the cost of litigation for my own
17 benefit, making false and misleading statements.

18 Judge Hairston found there was no evidence to
19 support that motion and dismissed it, but then last
20 Friday, three business days before this trial, Your
21 Honor, Dr. Crawford has filed a lawsuit against me

22 personally in general district court downstairs for

7

1 defamation arising out of that January hearing. So

2 I wanted to bring that to the court's attention.

3 MR. CORRIGAN: Your Honor, the reason I'm

4 here is because of the claims against Ms. York

5 directly. She should not be forced in a proceeding

6 that deals with Dr. Crawford in the Richmond Public

7 Schools to defend herself.

8 THE COURT: Uh-huh.

9 MR. CORRIGAN: So if anything comes up -- THE

COURT: -- well, those claims are

11 pending in the district court, right?

12 MR. CORRIGAN: The defamation claim is

13 but the -- the sanctions claim that we're going to

14 be seeking is that's why I'm here is to assert that

15 on -- on her behalf, rather than her having to do

16 that. To let the court know.

17 THE COURT: All right. All right.

18 MS. YORK: So we're happy to proceed

19 however Your Honor would wish, but we would

like to

20 have a ruling on -- on our motions for the record.

21 And Ms. Williams would like to address the court

22 with respect to the motion to quash the witness

8

1 subpoenas, because we have some important

2 individuals who are -- are here and they don't have

3 anything to testify to. So how would Your Honor

4 like to proceed?

5 THE COURT: Let's take up those motions

6 to quash. Ms. Crawford, I'm going to hear some

7 motions to quash some witness subpoenas right now.

8 Apparently you have filed -- you've caused some

9 subpoenas to issue for the various witnesses?

10 DR. CRAWFORD: Yes, sir.

11 THE COURT: All right. And when this

12 lawyer makes her presentation, you'll have an

13 opportunity to respond.

14 DR. CRAWFORD: Thank you, sir.

15 THE COURT: You're welcome.

16 MS. WILLIAMS: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MS. WILLIAMS: Again, my name is Simone

19 Williams and I represent the Richmond School

Board.

20 Ms. Crawford issued four subpoenas to

21 four different witnesses. The first one that I

22 would address will be the current superintendent,

9

1 Mr. Jason Kamras. And he was subpoenaed to

appear

2 today. He was not the superintendent at the time of

3 this particular incident. And just to remind the

4 court, Ms. Crawford is here because she wants her

5 invoice paid for her functional behavioral

6 assessment and Mr. Kamras was not even a

7 superintendent at that time. He doesn't have any

8 knowledge about it, so we would ask that he would

be

9 dismissed and not have to sit through the

10 proceedings today. That was a second motion.

11 Then another motion -- another subpoena

12 was filed against Dr. Page. She's a reentry

13 counselor. She doesn't have any firsthand

knowledge

14 about this incident other than what was told to her.

15 She also --

16 THE COURT: -- wait, what -- what is

17 her -- she's a reentry what?

18 MS. WILLIAMS: She's a reentry counselor.

19 THE COURT: Counselor.

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: Uh-huh.

22 MS. WILLIAMS: She doesn't have any

10

1 authority over these proceedings, and that goes for

2 all of the witnesses that I'm about to mention,

3 including Dr. Patrick Sapini. He's a podiatrist, he

4 has patients today. He -- same thing --

5 THE COURT: -- he's a podiatrist?

6 MS. WILLIAMS: Yes, Your Honor. And

he's

7 a member of the Richmond School Board as well --

8 THE COURT: -- oh, I see.

9 MS. WILLIAMS: Yes. And he also does not
10 have any firsthand knowledge. We don't know why

his

11 testimony would be relevant today.

12 THE COURT: Uh-huh.

13 MS. WILLIAMS: And same with Elizabeth
14 Doerr. She is the CFO for a big board company.

15 Same argument, Your Honor --

16 THE COURT: -- she's a CFO for what?

17 MS. WILLIAMS: She's a CFO for a company.

18 She has a big board meeting today.

19 THE COURT: Oh, she's also a member of
20 the school board.

21 MS. WILLIAMS: Yes. Yes, I apologize,
22 Your Honor.

1 THE COURT: All right.

2 MS. WILLIAMS: These three members are
3 all members of the school board, Page, Dr. Sapini,
4 and Elizabeth Doerr --

5 THE COURT: --how many people constitute
6 the board?

7 MS. WILLIAMS: I believe it's five.

8 Seven, sorry.

9 THE COURT: So these three --

10 MS. WILLIAMS: -- five --

11 THE COURT: -- two individuals are --

12 MS. WILLIAMS: -- no, I'm sorry.

13 THE COURT: The -- the -- there was no
14 subpoena issued for every member of the board, just
15 these two; is that correct?

16 MS. WILLIAMS: No, three --

17 THE COURT: -- three.

18 MS. WILLIAMS: -- members of the board
19 and then one superintendent, Your Honor.

20 THE COURT: I see. Dr. Page is also a
21 member of the board.

22 MS. WILLIAMS: Yes, Your Honor.

12

1 THE COURT: All right. All right.

2 MS. WILLIAMS: Thank you.

3 THE COURT: Thank you.

4 DR. CRAWFORD: Good morning, Your
Honor.

5 THE COURT: Good morning.

6 DR. CRAWFORD: I -- I did subpoena

7 Mr. Jason Kamras. He's the superintendent for

8 Richmond City Public Schools and he also is a title
9 person because Mr. Kamras signed off and was

10 submitted on his behalf with his original signature,

11 verify answers and responses to this court

12 proceeding. So I -- I reserve the right to question

13 him on the statements that he has provided and

14 that's why he was subpoenaed, because there's

15 documentation that has been submitted to the court

16 that's a part of the court records, along with his
17 verified answers. And he -- he signed these
18 answers. So that means that I have a right to
19 question him so to -- to determine, you know, what
20 are -- these responses are and why these were
21 submitted to the court. So he has direct
22 involvement.

13

1 The members of the school board, I
2 elected to subpoena members of the school board
3 because this is a matter of me versus the School
4 Board for Richmond City. These individuals have
5 firsthand knowledge of the work that was done.

They

6 have knowledge of the -- they -- their obligation to
7 pay. So they're part of the decision making process
8 for authorizing the pay for services. And so that's
9 why they were subpoenaed, to answer to the
specifics
10 of their -- their -- their guidelines, their role,

11 why they have not paid the bill, why they refuse to
12 pay, and what their dues are to pay this debt.

13 THE COURT: Uh-huh.

14 DR. CRAWFORD: So that's why they were
15 subpoenaed, so they do have involvement in this
16 matter.

17 THE COURT: Uh-huh. Well, Ms. Williams
18 mentioned that these -- these individuals don't have
19 any direct knowledge of this case.

20 DR. CRAWFORD: Your Honor, they -- these
21 are members of the school board. They are on the
22 decision making body that determines what gets
paid,

14

1 what doesn't get paid, why it doesn't get paid.
2 They're the ones that oversee the -- the turn off on
3 the budget that's -- that's responsible seeing that
4 I get paid for my services. So they are members of
5 the school board. So I -- I -- and just to be
6 clear, I do understand they have other full-time

7 duties, but they serve -- they -- they're part of

8 this decision making process.

9 THE COURT: Uh-huh.

10 DR. CRAWFORD: And they do authorize the

11 payments, they do deny the payments. So they do

12 have a role in this process.

13 THE COURT: I'm told that doctor --

14 that -- I guess he's a doctor -- the superintendent

15 wasn't in place at the time of this transaction that

16 you're suing on.

17 DR. CRAWFORD: Yes, he was working. He

18 was -- he was working. The superintendent came

on

19 board April the 1st, 2018. This work

20 commiserated [sic] -- it started -- this work ended

21 in March of 2018. The bill was submitted in -- at

22 the end of March of 2018. He was on staff and in

1 place.

2 THE COURT: Uh-huh.

3 DR. CRAWFORD: So he was -- the

4 transition of powers had taken place.

5 THE COURT: Uh-huh.

6 DR. CRAWFORD: So he was in place when

7 this matter -- he was in place when I was doing the

8 work.

9 THE COURT: Uh-huh. All right. Thank

10 you.

11 DR. CRAWFORD: Thank you sir.

12 THE COURT: Let's conversate. Ms. -- the

13 superintendent was on board when this all occurred.

14 Is that right?

15 MS. WILLIAMS: No, no, Your Honor. So

16 when the functional behavioral assessment was

17 completed, when the due process hearing was

ordered,

18 the superintendent, Mr. Kamras, was not a part of --

19 he was not the superintendent for Richmond at that

20 time. Afterwards when the invoice issue came into

21 place he was, but that's not an issue in terms that

22 we're here today for the actual hearing that was

1 done that was ordered for the functional behavioral
2 assessment. And in terms of the verified -- I think
3 Ms. Crawford mentioned the interrogatory answers,
4 those answers were prepared by counsel. He
verified
5 them and they're not an issue for trial today for
6 her to be -- for him to be subpoenaed today.

7 In terms of the three superintendents, I
8 would like to first point out to the court that they
9 speak as a group, not individually. This was not
10 something that was voted on in terms of whether to
11 pay Ms. Crawford or not. They delegate these tasks
12 to staff. They do not have any individual decision
13 in -- in whether to pay Ms. Crawford or not, Your
14 Honor.

15 THE COURT: So the issue of payment to
16 the plaintiff never was before the board?

17 MS. WILLIAMS: No. And only -- the only
18 knowledge that the superintendents have about the
19 case is what happened what they were told in closed

20 session.

21 THE COURT: Uh-huh. All right.

22 MS. WILLIAMS: Thank you.

17

1 THE COURT: Thank you. Ms. York, you

2 mentioned a motion for sovereign immunity had

been

3 taken under advisement.

4 MS. YORK: Yes, Your Honor.

5 THE COURT: From last June, you said?

6 MS. YORK: Yes, Your Honor.

7 THE COURT: There was some question as to

8 whether this judge would hear this case because as

9 you may know, I'm retired. I think the case was

10 assigned to Judge Hairston; is that right?

11 MS. YORK: The case --

12 THE COURT: -- he's had motions in this,

13 right?

14 MS. YORK: Yes. We've had a couple

15 judges, Your Honor. The case was originally

16 assigned to Judge Hairston. When he appeared last

17 November, November of 2018, Judge Richard
Taylor was

18 sitting as a substitute and he heard preliminary

19 demurrers. There were -- Mr. Kamras was named

as a

20 defendant individually and he was dismissed on a

21 demurrer and a nonentity. Richmond Public

Schools

22 was also named. So Judge Richard Taylor took up

18

1 those issues. Then we came in January on

2 Dr. Crawford's motion for summary judgment and

her

3 motion for sanctions against me and Judge Hairston

4 heard those motions. Then we've had a special plea

5 of sovereign immunity, a motion to dismiss or

6 compel, and that was heard before Your Honor in

7 June.

8 And then at that point the case I think

9 we got a letter or a note from chambers that the

10 case had been reassigned to you. We were supposed

11 to have a July trial date and we met with Your

Honor

12 in chambers for a status conference at that time and

13 reported that we would not be interested in a

14 mediation session. So the case was then reset for

15 trial today. And you had taken the June matters

16 under advisement --

17 THE COURT: -- and those matters again

18 was a plea of sovereign immunity?

19 MS. YORK: Yes, Your Honor, and I'm happy

20 to go over that --

21 THE COURT: -- yeah, would you.

22 MS. YORK: To refresh your recollection.

19

1 THE COURT: Uh-huh.

2 MS. YORK: So the Individuals with

3 Disabilities Education Act or the IDEA provides the

4 statutory frame work for special education for

5 public school students. And under the IDEA, a due

6 process complaint is an enforcement mechanism

7 available to parents and students if they do not
8 believe the school division is providing the
9 required services.

10 So in October of 2017, a student at
11 Thomas Jefferson High School filed a due process
12 complaint against the Richmond Public Schools,
13 alleging that the school system had not conducted
14 necessary evaluations and assessments to determine
15 the special education services that the student
16 required. So the student and parent were
17 represented during that proceeding by an advocate,
18 Candace Lucas, and William Francis, Jr., a local
19 attorney, was appointed the hearing officer for that
20 due process hearing. The hearing officer is a
21 lawyer trained by the Virginia Department of
22 Education and is appointed by the Supreme Court of

20

1 Virginia. He's not a Virginia Department of
2 Education employee and he's not an employee of the
3 school system. He's an independent hearing officer.

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4 THE COURT: And who was that again?

5 MS. YORK: Mr. William Francis, Jr. So

6 there was a due process hearing before Mr. Francis

7 on December 7th, 2017, and at that hearing the

8 parent had subpoenaed Dr. Crawford to testify on

the

9 student's behalf. And Dr. Crawford was of the

10 position that the student needed an Individualized

11 Education Program, also called an IEP, in order to

12 successfully attend school. Mr. Francis determined

13 that evaluations and assessments were necessary,

and

14 he issued an order dated December 11th, 2007.

And

15 Mr. Francis --

16 THE COURT: -- 2017 you mean.

17 MS. YORK: '17. I apologize, Your Honor.

18 THE COURT: '17, right. Right, that's

19 fine.

20 MS. YORK: So over the school board's

21 objection, Mr. Francis ordered that Dr. Crawford
22 would conduct the functional behavioral assessment

21

1 and classroom observations.

2 THE COURT: Uh-huh.

3 MS. YORK: So the school board objected
4 to Dr. Crawford performing those evaluations
because

5 she had already testified on behalf of the student,

6 so it was the school board's position she could not

7 be an independent evaluator.

8 THE COURT: Uh-huh.

9 MS. YORK: There was no contract between
10 Dr. Crawford and the school board. The school
board

11 did not agree to allow her to perform the FBA and

12 objected, but it was ordered by the hearing officer

13 to allow her to perform the FBA. Dr. Crawford

14 submitted 110 page report dated February 23rd,

2018,

15 and provided an invoice totaling \$26,900. The

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16 school board via its director of exceptional
17 education, Dr. Anthony Walker, requested a
detailed
18 bill to justify that large amount, and Dr. Crawford
19 provided an itemized bill in April totaling
20 \$27,083.36. So the parties were unable to resolve
21 their differences about the amount of the bill and
22 Dr. Crawford filed suit. So we're now here in the

22

1 legal arena. We're not in a due process hearing
2 under the IDEA, so we have to look at Dr.
Crawford's
3 complaint, the operative complaint in this case.
4 And the complaint alleges that she was ordered to
5 perform an assessment, she performed the
assessment,
6 she submitted an invoice, and she was not paid.
7 So we have to ask what's the cause of
8 action, okay. There's no allegation that there was
9 a contract between the school board and

10 Dr. Crawford. There was no offer, there was no
11 acceptance, there was no meeting of the mind. So
12 we're left with an equitable claim for quantum
13 meruit. Quantum meruit is Latin for as much as he
14 has deserved and it's an equitable doctrine designed
15 to prevent unjust enrichment to the party benefiting
16 from another services when a valid contract does
not
17 exist.

18 THE COURT: Not necessarily, but that's
19 fine. Go ahead.

20 MS. YORK: Well, that's what the Supreme
21 Court has said.

22 THE COURT: Has the Supreme Court said

23

1 that?

2 MS. YORK: Yes, Your Honor. So

3 Dr. Crawford's claim must be one of quantum meruit
4 because it's not a tort claim. There's no tort
5 action.

6 THE COURT: Uh-huh.

7 MS. YORK: There's no contract, it's not
8 a contract action. So we're left with an equitable
9 claim.

10 THE COURT: Uh-huh.

11 MS. YORK: When we're determining what
is

12 the cause of action. So then you look at the
13 Supreme Court in a case Jean Moreau and
Associates

14 Inc. versus Health Center Commission, Ex. Rel.
15 County of Chesterfield. The cite is 283 Virginia
16 128. It's a 2012 case. I have a copy if Your Honor
17 would like it.

18 THE COURT: All right. Is that a Supreme
19 Court case?

20 MS. YORK: Yes, Your Honor. And then in
21 this 2012 case, Your Honor, the Supreme Court of
22 Virginia held that governmental agencies
performing

1 governmental functions are immune from quantum
2 meruit claims under the doctrine of sovereign
3 immunity. And the reason being that the -- there's
4 no -- there's -- the Supreme Court case that says
5 the Commonwealth enjoys sovereign immunity for
tort
6 claims. But we know that the Commonwealth
doesn't
7 enjoy sovereign immunity for contract claims. So
8 then you look, well, what is this equitable claim.
9 Has sovereign immunity been abrogated by --
10 THE COURT: -- but I thought the
11 defendant here was the Richmond School Board. I
12 mean the Richmond Public Schools.
13 MS. YORK: It is, Your Honor. So there's
14 an earlier case between Jean Moreau that held the
15 Commonwealth of Virginia, the state, was entitled
to
16 sovereign immunity for claims of quantum meruit.

17 THE COURT: Uh-huh.

18 MS. YORK: So then in Jean Moreau, the

19 Supreme Court of Virginia analyzed whether that

20 would also apply to municipalities in other

21 governmental agencies and it did. The language,

22 Your Honor --

25

1 THE COURT: -- is the Richmond Public

2 School an entity?

3 MS. YORK: It's -- it's a municipal --

4 it's considered a municipal corporation and that,

5 the case that decides that is Kellam versus School

6 Board of the City of Norfolk.

7 THE COURT: Uh-huh.

8 MS. YORK: Which holds that school boards

9 are governmental agencies acting in a governmental

10 capacity.

11 THE COURT: Uh-huh.

12 MS. YORK: I have that case, too, if Your

13 Honor would like it.

14 THE COURT: All right. Oh, thank you.

15 MS. YORK: If you look at the Jean Moreau
16 case, Your Honor, on the top of page six of the
17 print out, the Supreme Court of Virginia says we
18 therefore conclude that municipal corporations
19 performing governmental functions are immune
from
20 quantum meruit claims, and that recovery against
21 municipal corporations on a quantum meruit basis is
22 limited to proprietary functions. So that's the

26

1 holding from the Supreme Court of Virginia.
2 THE COURT: Uh-huh.
3 MS. YORK: Governmental agencies
4 performing governmental functions are immune
from
5 quantum meruit claim. So you read that case in
6 conjunction with the Kellam case, which says that
7 school boards are governmental agencies performing
8 governmental functions, you must reach the
9 conclusion that the school board, here the School

10 Board for the City of Richmond, enjoys sovereign
11 immunity from Dr. Crawford's claims for quantum
12 meruit, and that's the basis of our plea of
13 sovereign immunity.

14 THE COURT: Uh-huh. Is the school --

15 Richmond Public Schools the only defendant?

16 MS. YORK: Yes, Your Honor. The school
17 board.

18 THE COURT: The school board is.

19 MS. YORK: Correct. That's the only
20 entity that can sue and be sued is the School Board
21 for the City of Richmond.

22 THE COURT: Right. But is the school

27

1 board a defendant in this case?

2 MS. YORK: Yes, Your Honor. The school
3 board is the defendant.

4 THE COURT: As well as Richmond Public
5 Schools.

6 MS. YORK: There's no such thing as

7 Richmond Public Schools.

8 THE COURT: That's what I was alluding

9 to. There's no such thing.

10 MS. YORK: There's no such thing and that

11 was -- Judge Taylor cleared that up in November.

12 Richmond Public Schools was dismissed because

it's a

13 nonentity.

14 THE COURT: Oh.

15 MS. YORK: So the only defendant is the

16 School Board for the City of Richmond.

17 THE COURT: Oh, I see. All right. Yeah.

18 All right.

19 MS. YORK: And so since the school board

20 is a governmental agency performing a

governmental

21 function, and this is a claim for quantum meruit, it

22 enjoys sovereign immunity.

1 THE COURT: All right.

2 MS. YORK: Thank you.

3 THE COURT: Ms. Crawford, do you have
any

4 response to this motion, renewed motion?

5 DR. CRAWFORD: Yes, yes, sir.

6 Okay. Your Honor, first I would like to

7 advise the court when Ms. York did a special

8 pleading for sovereign immunity, the court had

9 already heard those issues in January. And the

10 court determined that the School Board for

Richmond

11 City was not immune -- did not have sovereign

12 immunity, because the school board act -- although

13 they carry out certain government powers and

14 activities, but they can be sued and sue others as

15 well because they have corporate entities with them.

16 Meaning that what the school board does, they are

17 allowed to earn profit off the general public when

18 they charge individuals in the community for

dances,

19 football games, all these things are under the

20 purview and guidance of the school board, so then
21 that's why we can be sued under 1950. So that is --
22 so they're not immune, and for Ms. York to bring it

29

1 up again, I'm going to make the claim res judicata

2 because --

3 THE COURT: -- the court overrule that
4 motion then?

5 DR. CRAWFORD: No. No, it was not.

6 THE COURT: Oh, okay.

7 DR. CRAWFORD: No, and it was not -- she
8 did not perfect an -- an appeal on that decision as
9 well. And she did not ask for --

10 THE COURT: -- well, what did the court
11 do in January?

12 DR. CRAWFORD: In -- in January --

13 THE COURT: -- (inaudible)?

14 DR. CRAWFORD: No.

15 THE COURT: Judge?

16 DR. CRAWFORD: No, it wasn't you. It

was

17 Judge Hairston. What he did, he issued a ruling and
18 a -- and an opinion around February 11 from the
19 January 10th hearing.

20 THE COURT: Uh-huh.

21 DR. CRAWFORD: In that he said -- he
made

22 it clear, she -- he said that Dr. Crawford made a

30

1 compelling argument. He indicated in his pleading,
2 and I'm paraphrasing because I don't have it
3 directly in front of me, he -- he said that the
4 school board does not have sovereign immunity and
5 that it can -- and cannot fit --

6 THE COURT: -- well, you can --

7 MS. YORK: -- I have the order.

8 THE COURT: All right. That's fine.

9 DR. CRAWFORD: He -- he said that the
10 school board does not -- is -- is -- does not have
11 sovereign immunity. He also indicated that at

12 the -- at the conclusion of the discovery phase, if
13 no new issue or evidence arises out of the
14 discovery, then I could resubmit my motion for
15 summary judgment.

16 THE COURT: Uh-huh.

17 DR. CRAWFORD: So the school board's
not

18 immune and under the -- like I said, and to do a
19 special pleading, in order to do a special pleading,
20 the entity must be pleading information that they
21 did not have available to them at the time of their
22 initial filing. She's using court rulings and

31

1 everything else that was available to her. So
2 she -- as an attorney, as a seasoned attorney, Ms.
3 York had information available to her to make
4 this -- this pleading on sovereign immunity. So
5 when she came back and asked for a special
pleading,
6 it was no new evidence that addressed that. So

7 she's coming back -- she's -- she's coming back

8 asking the court to make another decision on the

9 ruling that is already determined.

10 THE COURT: Uh-huh.

11 DR. CRAWFORD: So I'm going to make the

12 claim under seal of claims a res judicata because it

13 has been already litigated, the court has already

14 ruled on it, and for the court to rule on it again

15 is -- is actually contradicting the court's prior

16 ruling in this matter because she's not presented

17 anything new.

18 THE COURT: Uh-huh.

19 DR. CRAWFORD: And also under -- when it

20 comes to the summary judgment piece, as far as

being

21 sued, when you have Lawyer versus Chester County

22 Public Schools, the -- the second circuit indicated

1 when he's in the independent valuations are done,

2 the school board is responsible for the payment of

3 the debt.

4 And I must clarify for the court that

5 keeps -- it keeps saying only a functional

6 behavioral assessment. There were two evaluations

7 ordered. It said a functional behavior assessment

8 and classroom observations. They are two forms of

9 evaluative processes and that's what -- that's how

10 come the school district facilitated almost 30-some

11 hours of work. They -- they scheduled me in the

12 school and I went into the building, I did the work,

13 and as far as a contract, they -- I don't have to

14 have a written contract, because I was acting under

15 a directive, which was an order. So I don't need a

16 contract because it wasn't a volunteering type

17 situation that I was under --

18 THE COURT: -- but you -- you never had a

19 contract with the school board; is that right?

20 DR. CRAWFORD: I -- not for -- not for

21 cutting up this work because I was ordered to do so,

22 and it was understood that I would be paid under

1 these guidelines. And this Ms. York --

2 THE COURT: -- but if you say you didn't

3 have a contract with the school board, how would

4 they be liable?

5 DR. CRAWFORD: Because under --

6 THE COURT: -- how would they be liable?

7 DR. CRAWFORD: Yeah. Under IDEA, when it

8 comes to 34 C F 3, 300, 5 (inaudible) 07 of the

9 federal mandates, independent evaluations -- and I

10 also have the -- in the presence of the court, and I

11 submitted this before, I submitted this before and

12 it's in the court record, and I'd be more than

13 happy -- if counsel doesn't oppose, I would be more

14 than happy to give them a second copy as well as an

15 additional copy to the court. And I can direct you

16 to page 53.

17 THE COURT: What is that again?

18 DR. CRAWFORD: This is -- this is the

19 regulation of special education programming in -- in

20 Virginia. So these are guidelines that authorize

21 and tell us what we do, because these are an
22 extension of the federal mandates that have been

34

1 compiled by the Department of Education of
Virginia.

2 And I can direct the court to page 52 of this
3 manual.

4 THE COURT: What -- what does 52 say?

5 DR. CRAWFORD: On page 52 it talks about
6 the responsibility of a hearing officer ordering it
7 and who pays for the -- the work that is done under
8 order. Because what happens is the school district
9 receive federal funding --

10 THE COURT: -- so when the hearing

11 officer orders this, that regulation which says or
12 requires that the -- the school board to be
13 obligated to pay?

14 DR. CRAWFORD: Yes, sir. What it says --
15 it says is at the public expense, and Ms. York has
16 already testified and I actually have copies,

17 additional copies of the November -- of the
18 November 9th or 8th hearing that we had in front of
19 Judge Taylor where -- where Ms. York advised the
20 court that the school board was responsible for the
21 debt, and I'm more than happy to supply a copy of
22 that as well.

35

1 THE COURT: All right. All right. Well,

2 let's see.

3 DR. CRAWFORD: I'd be more than happy to
4 direct the court's attention, and if Ms. York
5 doesn't have an issue with it, she did advise the
6 court that her client was responsible for the debt.

7 THE COURT: Uh-huh. Well, she'll have an
8 opportunity to respond.

9 DR. CRAWFORD: Yes. So when it comes to
10 that, you know, sovereign immunity, they don't
have

11 sovereign immunity under those grounds.

12 THE COURT: Well, what about -- what are
13 you going to do about the Supreme Court case you

14 cited me to which I'm bound to follow?

15 DR. CRAWFORD: That Supreme Court --

16 because that -- that has -- that has independent

17 that was -- does that address specific independent

18 evaluations. That's --

19 THE COURT: -- no, I don't think the

20 factual background involves that, no.

21 DR. CRAWFORD: Right. And the reality of

22 it is it was understood and I am able to prepare

36

1 testimony through witnesses that they have an

2 obligation and a duty to pay for this, as well as

3 documents. All the information that I'm willing to

4 present to the court is in the court records, and

5 Judge Hairston, he acknowledged it, he accepted it,

6 he indicated in his opinion that they did not have

7 sovereign immunity. So she's raising the same issue

8 that the court has already addressed and addressed

9 it thoroughly.

10 THE COURT: Well, she's -- she's

11 signaling me that she has some order from Judge

12 Hairston. I'm going to take --

13 DR. CRAWFORD: -- yes.

14 THE COURT: -- that --

15 DR. CRAWFORD: -- I don't have a problem

16 her giving a copy of the ruling.

17 THE COURT: Okay.

18 DR. CRAWFORD: The opinion.

19 THE COURT: All right.

20 DR. CRAWFORD: I don't have a problem

21 with that, but he did -- he did address that. He

22 did -- also indicated that I could resubmit my

37

1 motion for summary judgment. As far as the

2 discovery questions --

3 THE COURT: -- uh-huh.

4 DR. CRAWFORD: -- when we were before

5 you, Judge Hughes, in June -- on June 10th, when

Ms.

6 York was raising the issue that I did not respond to

7 the -- the -- the interrogatory, and I'm

8 paraphrasing, you indicated in that proceeding that
9 I did respond. It was really a matter of me -- she
10 just didn't get any additional information, because
11 the issue was she was asking questions that was
12 overreaching, overbearing, and broad, and she was
13 asking questions that they had already had
14 information to. She was asking questions about
15 my -- my license.

16 THE COURT: Uh-huh.

17 DR. CRAWFORD: That was already
18 submitted. Not only was it in the court records,
19 but the counsel for the defendant who had that, she
20 was asking information about had I ever been
21 arrested. That's public information. Public
22 information, I don't have a obligation to turn

38

1 anything over. She can just go get it herself.
2 She's being paid to do this, so why should I have to
3 supply her with information that is free to the
4 public. If you want to know about an arrest, she

5 has the capabilities of finding that out. If you
6 want to know about my license, although I had
7 already submitted that information before the court
8 and in pleadings, her client also has duplicate
9 copies of my license. They have my resume.
10 Everything that she asked, then she asked for every
11 piece of communication or documentation, and I'm
12 paraphrasing.

13 THE COURT: Uh-huh.

14 DR. CRAWFORD: Of -- of anything between
15 myself and Richmond City Public Schools, because
16 they are -- they are -- they're above the purview of
17 the school board. And my response was that they
had
18 control of that e-mail servers. So anything that
19 they already have control of, I don't have to
20 resubmit. And if she wanted anything, if she
wanted
21 everything -- and I'll repeat because I said it in
22 June, if she wanted everything that pertains to me

1 or that I have in my possession that relates to the
2 school board or Richmond City Public Schools, that
3 means that I have to go to my home and start with
my
4 Head Start JP 1 certificate from 1979. And then you
5 talk about my stuff, then you talk about all the
6 entities of my 35-year-old son as well as my
7 27-year-old son. Those things are too broad and
8 they're overreaching and so that's -- that's --
9 that's too much. And so she was not specific what
10 she wanted for things that they already have in
11 their possession. I don't have an obligation to
12 resubmit something that they've already have and
13 I'm -- and I will make that clear. They wanted me
14 to do thing -- duplicate what they had. If I need
15 to reduplicate information, they going to pay me by
16 the hour.

17 THE COURT: Uh-huh.

18 DR. CRAWFORD: Because -- and they're

19 going to pay me for expenses, too. Because you
20 talking about boxes and miles of stuff from
diplomas
21 to certificates to -- to even my employment with the
22 school district, because I've worked with them and

40

1 worked for the school up under the purview of
2 Richmond City Public School Board. For about 13,
14
3 years. So that's not -- that's not something that
4 the court indicated in that hearing when you say
5 yes, you (inaudible) if they have -- if it's public
6 record, they can just get it themselves.

7 THE COURT: I see. All right.

8 DR. CRAWFORD: If they have it in their
9 possession, why should I have to resubmit
something

10 they already have? They were asking -- she was
11 asking for things that -- that's already in the
12 record and that she have -- that I've already

13 submitted. So she's -- it's constant repetitive
14 things.

15 THE COURT: Right.

16 DR. CRAWFORD: So yes, I did respond to
17 the questions and I responded to them twice. When
18 she made that allegation that I did not respond to
19 them, I set -- I respond and said I -- when I did
20 initially respond to her, because I initiated the
21 discovery. Although she asked about it and -- and
22 Judge Hairston said okay, pending the outcome --

41

1 THE COURT: -- well, I'm not concerned so
2 much now with the discovery issue.

3 DR. CRAWFORD: Yeah, right.

4 THE COURT: As I am with the sovereign
5 immunity plea.

6 DR. CRAWFORD: Right, but no, she doesn't
7 have sovereign immunity and I can produce
evidence,

8 and like I said, I'm -- if -- if the court may -- I
9 would love to give you the guidelines that -- that's

10 --

11 THE COURT: -- well, you told me what
12 they say. Page 52 says --

13 DR. CRAWFORD: -- yes.

14 THE COURT: -- no sovereign immunity?

15 DR. CRAWFORD: No, it doesn't talk -- it
16 says that they're obligated to pay the debt. This
17 is a debt collection. This is not a -- I'm on a
18 debt collection, Your Honor.

19 THE COURT: Right.

20 DR. CRAWFORD: This is different. I'm
21 not out there suing because I broke a leg or slipped
22 off the floor. I am doing a debt collection and I

42

1 have to keep making that clear because when you're
2 doing a debt collection.

3 THE COURT: Uh-huh.

4 DR. CRAWFORD: That's different than just
5 going out just suing the school board. And there's
6 --

7 THE COURT: -- well --

8 DR. CRAWFORD: -- and like I said, and

9 Lawyer versus Chesterfield County School Board, it

10 addressed the IEE and it - and it was under 34 C FR

11 300.508 of the federal mandates. I also have the

12 regulations under IDEA, which is also in the

records

13 that makes this school board obligated. So they

14 don't have -- they're not immune from being sued

15 because they do have corporate powers, and if

16 they -- because they not only received public

17 funding, but they receive funding from the general

18 community when they rent their buildings out for

19 use.

20 THE COURT: Right.

21 DR. CRAWFORD: They receive money from a

22 private entity. It's no longer a public funding.

43

1 When they -- when they charge for the football

2 games, the basketball games, they're asking people

3 to pay money for their programming, to help support

4 their programming. So they're raising money from
5 the public. So no, they -- they --

6 THE COURT: -- I think you -- I think you
7 mentioned -- you mentioned that, right. Thank you.

8 DR. CRAWFORD: Thank you.

9 THE COURT: What's this order you have
10 here from Judge Hairston?

11 MS. YORK: Yes, Your Honor. So the time
12 of the January hearing, I was opposing
13 Dr. Crawford's motion for summary --

14 THE COURT: -- did Judge -- did Judge
15 Hairston rule on the sovereign immunity?

16 MS. YORK: No, Your Honor.

17 DR. CRAWFORD: Yes.

18 MS. YORK: It had not -- the plea had not
19 been made. I raised it in opposition to summary
20 judgment, and if you turn to the last page of the
21 order --

22 THE COURT: -- so the first time you've

1 raised that was with me?

2 MS. YORK: Was the first plea, yes, Your
3 Honor.

4 THE COURT: In June.

5 MS. YORK: And so if you turn to the last
6 page of the order, Judge Hairston says because I'm
7 denying the motion for summary judgment on other
8 grounds, I will not decide the issue of sovereign
9 immunity. So it has not been decided.

10 THE COURT: I -- I got a copy. Turn to
11 page what, now?

12 MS. YORK: The last page of the order.

13 It's at the -- at the end of the last paragraph,
14 Your Honor.

15 THE COURT: Lastly, the court notes that
16 the school board raised the issue of sovereign
17 immunity in its brief. However, the school board
18 has not raised sovereign immunity through a plea
and
19 bar of its own.

20 Because the court denied plaintiff's
21 motion for summary judgment on other grounds, it
22 need not address the issue of sovereign immunity at

45

1 this time. I see.

2 MS. YORK: So Dr. Crawford made
3 statements that the court had denied my plea of
4 sovereign immunity and that was not true. I
5 raised -- I filed a plea of sovereign immunity that
6 was heard in June and the court took it under
7 advisement. Dr. Crawford also said, you know, I
8 should have filed it when I filed my response of
9 pleadings. The Supreme Court of Virginia has said

10 that you -- you don't waive your sovereign
immunity

11 plea and Ovsall (phonetic) -- Ovsall versus
12 Commonwealth, they raised sovereign immunity for
the
13 first time on appeal.

14 THE COURT: Do these cases you cited to
15 me discuss the quantum meruit as an equitable

claim?

16 MS. YORK: Yes, Your Honor.

17 THE COURT: They do in these cases here?

18 MS. YORK: I mean, it -- it quantum

19 meruit is an equitable claim --

20 THE COURT: -- no, that's -- I'm just

21 asking you, do these cases discuss that (inaudible)?

22 MS. YORK: Yeah. I mean, yes, Your

46

1 Honor, they discuss quantum meruit.

2 THE COURT: They do.

3 MS. YORK: They talk about it being quasi

4 contractual.

5 THE COURT: Right.

6 MS. YORK: But it's -- occurs when there

7 is no contract. On page --

8 THE COURT: -- well, let me give you an

9 example. Suppose I tell you I'm going to go to

10 Alaska and I want you to cut my grass but we -- we

11 don't have an agreement about compensation for

that

12 service.

13 MS. YORK: Yes, Your Honor.

14 THE COURT: And I get back from Alaska

15 and you tell me, well, Judge, you -- you've -- I cut

16 your grass and I tell you that, well, we never had

17 an agreement about, you know, what I would pay

you.

18 MS. YORK: Yeah.

19 THE COURT: Isn't that a quantum meruit

20 situation?

21 MS. YORK: I would suggest that you have

22 an oral contract, because there you have the parties

47

1 agree --

2 THE COURT: -- right.

3 MS. YORK: Here we didn't have the

4 parties agree to anything. Dr. Crawford has

5 admitted there was no contract, admitted that it was

6 not voluntary, admitted that the hearing officer

7 ordered this. This was thrust upon the school

8 board.

9 THE COURT: Right.

10 MS. YORK: Because the school board

11 didn't engage Dr. Crawford and say let's do this.

12 THE COURT: Well, what's the authority of

13 Mr. Francis, by the way, to order this?

14 MS. YORK: It's set out in the IDEA that

15 the hearing officer has authority --

16 THE COURT: -- well, when he does that --

17 when he does that, who pays for these services?

18 MS. YORK: The -- the regulations provide

19 that it's to be at the public expense --

20 THE COURT: -- okay.

21 MS. YORK: -- and had a reasonable bill

22 been submitted, it would have just been paid and we

48

1 wouldn't be here, but now we're in the legal arena.

2 We're not in a due process hearing --

3 THE COURT: -- oh. So the school board

4 admits there's an obligation to pay. Is that right?

5 MS. YORK: That -- that -- that the
6 evaluation is to be done at the public expense, yes.
7 And the school board, if we were to put on evidence,
8 it would be that between 2 and \$4,000 is what the
9 school board typically pays for these. So when it
10 received a bill for \$26,900 --

11 THE COURT: -- oh, I see.

12 MS. YORK: -- it couldn't just agree to
13 pay.

14 THE COURT: Okay.

15 MS. YORK: But now a lawsuit has been
16 filed, so we're not in an administrative due process
17 hearing under those rules. We're here in court and
18 we have to look at what is her cause of action. And
19 she's admitted there's no contract. It's not a tort
20 action.

21 THE COURT: Right.

22 MS. YORK: So we're left with quantum

1 meruit and you have this Jean Moreau case --
2 THE COURT: -- uh-huh.

3 MS. YORK: -- and in Jean Moreau on page
4 five of the print out, it's discussing the Supreme
5 Court of Virginia's decision in *Flori* (phonetic) and
6 says under the common law, sovereign immunity did
7 not shield the sovereign from liability for its
8 valid contracts. However, quasi contractual
9 doctrines are premised on the absence of a valid
10 contract.

11 THE COURT: Well, if this case is
12 dismissed, does Ms. Crawford ever get paid?

13 MS. YORK: That would be between her and
14 the school board if they could work out something
15 after that. But we can't -- we have to see what is
16 the law and apply the law to the facts. We have a
17 quantum meruit claim --

18 THE COURT: -- uh-huh.

19 MS. YORK: -- that -- and we have a case
20 from the Supreme Court of Virginia that says
21 governmental agencies performing governmental
22 functions are immune.

1 THE COURT: Uh-huh.

2 MS. YORK: Then we have the Kellam case
3 which says school boards are governmental agencies
4 performing governmental functions.

5 THE COURT: Right.

6 MS. YORK: Dr. Crawford relied on the --
7 believe it's 22.1-70 which says school boards can
8 sue and be sued. But that's the exact language
9 Kellam addressed and says that does not abrogate
10 sovereign immunity, that they can sue and be sued.

11 THE COURT: All right. Let me --

12 let's -- Mr. Corrigan.

13 MR. CORRIGAN: Yes, sir.

14 THE COURT: Why are you here?

15 MR. CORRIGAN: Pardon?

16 THE COURT: Why are you here?

17 MR. CORRIGAN: I'm here just in --

18 because we're at the conclusion of this --

19 THE COURT: -- do you have --

20 MR. CORRIGAN: -- Dr. Crawford has

made a

21 number of claims against Ms. York personally.

And I

22 was here to kind of --

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1 THE COURT: -- but does -- there's no

2 claim -- no claim pending against Ms. York in this?

3 MR. CORRIGAN: Not -- not in this

4 hearing, no, sir.

5 THE COURT: Just the general district

6 court case.

7 MR. CORRIGAN: That's -- that's a

8 separate case.

9 THE COURT: Right.

10 MR. CORRIGAN: But I'm here because of

11 the things that had been said previously by

12 Dr. Crawford that we think are sanctionable in this

13 case.

14 THE COURT: All right.

15 (Cross talk.)

16 MR. CORRIGAN: I have not, Judge. I

17 think it would be premature to do so until we prove
18 all the facts that show that what she said was not
19 accurate. I don't want to --

20 (Cross talk.)

21 THE COURT: -- to that.

22 MR. CORRIGAN: When the court hears the

52

1 evidence and the evidence comes in and the court
2 understands what the -- the -- the actual facts are
3 and if we have to, we'll submit that, you know, in
4 that -- in that fashion.

5 THE COURT: But that's something you

6 wanted to take up at the end of --

7 MR. CORRIGAN: -- the end of today, if --

8 if -- once the court makes whatever decision the
9 court makes, we still want to be heard on our motion
10 for sanctions. That's all we do here. Thank you.

11 THE COURT: Thank you. It's always good
12 to see you.

13 MR. CORRIGAN: Yes, sir. You as well.

14 MS. YORK: Your Honor, but it's --

15 THE COURT: -- your motion -- the -- the

16 plea of sovereign immunity is granted. It's plain

17 as day. And I will take up the sanctions motion

18 later and I enter an order -- send me an order to

19 that effect, Ms. York. Thank you.

20 MS. YORK: Yes, Your Honor.

21 THE CLERK: All rise.

22 MR. CORRIGAN: Good-bye.

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1 THE CLERK: Court stands in recess.

2 (The recording was concluded at 10:06 a.m.)

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1 **CERTIFICATE OF TRANSCRIBER**

2 I, Jackie A. Scheer, do hereby certify

3 that the foregoing transcript is a true and correct

4 record of the recorded proceedings; that said

5 proceedings were transcribed to the best of my

6 ability from the audio recording and supporting

7 information; and that I am neither counsel for,

APP. 193

8 related to, nor employed by any of the parties to
9 this case and have no interest, financial or
10 otherwise in its outcome.

11

12

13

14

15

16 JACKIE A. SCHEER

17 APRIL 16, 2020

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22

1 SUPREME COURT OF VIRGINIA

2 COURT OF APPEALS

3

4 MARLA FAITH CRAWFORD,

PhD *

5 APPELLANT

6 Vs. * RECORD NO. 210877

7 SCHOOL BOARD

FOR RICHMOND CITY

8 APPELLEE *

9 -----

10

11

12

13 WRIT PANEL ARGUMENT

14 PERSONAL APPEARANCE

15 FRIDAY, MAY 13, 2022

16 9:49 A.M.

17

18 CRANE-SNEAD & ASSOCIATES

19 4914 Fitzhugh Avenue #203

20 Richmond, Virginia 23230

21 (804) 355-4335

22

23

24 By: Stayce Lawson, Shorthand Reporter (telephonically)

25

2

1 Appearances:

2

3 Senior Justice Lawrence L. Kootz, Jr.

4 The Honorable Cleo Powell

5 The Honorable Stephen McCullough

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9 BY: Marla Faith Crawford, PhD, pro se

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1 P-R-O-C-E-E-D-I-N-G-S

2 DR. MARLA CRAWFORD: Good morning, Your

3 Honors. May I please have leave for the court reporter

4 to get started?

5 JUSTICE POWELL: Yes, ma'am. We will give
6 her a minute to set up. And while she is setting up, you
7 will have ten minutes to argue your case.

8 DR. MARLA CRAWFORD: Yes, ma'am. Thank you,
9 Your Honors.

10 JUSTICE POWELL: Yes, ma'am. I will assume
11 that perhaps he or she has had ample time to set up, so
12 we will begin.

13 DR. MARLA CRAWFORD: Yes. Thank you, Your
14 Honor, for giving me this opportunity. My name is Dr.
15 Marla Faith Crawford, owner of Elite Educational
16 Consulting.

17 This is a matter concerning a debt collection
18 of services provided under the Individual Disability
19 Education Act at the public's expense that was ordered by
20 a hearing officer.

21 And in this process of carrying out these
22 services, I performed two assessments. And they were
23 hourly rated, and I was in full cooperation with the
24 agents acting on behalf of the school board. So I was

25 vendor of theirs, as well, so they understood my fees.

1 The errors of the Court poses a detriment not
2 only to the rules of this Court, but the rules governing
3 public policy for the Commonwealth of Virginia, as well
4 as federal mandates under IDEA when it comes to the
5 education of children with disabilities.

6 One error that the Court made on January 10
7 of 2019, the Court ordered discovery. And upon the
8 discovery, the Court had advised all parties that I could
9 resubmit my motion for summary judgment in that I had
10 made a compelling argument in the matter.

11 Upon that, no new information was acquired
12 through discovery, the material facts were the same and
13 they undisputed, and the of the Court gave no ruling or
14 opinion in reference to that motion for summary judgment
15 after it was argued in June of 2019.

16 The counsel for the School Board for Richmond
17 City, and it's in the record transcript 9, transcript
18 page 9 paragraphs 14 through 19, agreed that the hearing

19 officer had ordered the functional behavioral assessment,
20 but it was also in observation that was not in the
21 record. And under have Virginia Code, counsel for the
22 respondent said it was the responsibility of the School
23 Board for Richmond Public Schools to be responsible for
24 the bill and expenses.

25 And she also indicated that we were at a pass

1 where we were getting ready to make a negotiated
2 agreement, which the school board offered \$11,500. I
3 wanted the \$12,000 of the deal, but counsel decided that
4 would not happen, for which they received over some
5 \$30,000-some dollars in expenses.

6 With that being stated, under Rule 3:20 for
7 summary judgement, when there is no disputed facts of the
8 event, the Court could have rendered a summary judgement
9 at no risk of an appeal. And that was clear in this
10 Court in Andrews v. Ring where it says that no evidence
11 that the record upon which summary judgement was granted
12 would have been any different, the trial court delayed

13 its ruling. That means, the Court did not have the
14 opportunity and the authority to ignore a timely filed
15 motion.

16 Also, in Barnes v. State, it says that a
17 properly filed motion pending before the trial court, the
18 act of not -- it's an administrative duty of the Court to
19 act on a summary judgement or a motion filed.

20 In Safety-Kleen Corp v. Garcia, it says it's
21 an abuse of discretion not to act on a timely filed
22 motion.

23 In Valuch v. Miller said it constitutes a
24 denial of due course of law when it's not acted on.

25 Another error of the circuit court is

1 granting the School Board for Richmond City sovereign
2 immunity, and it was in conflict with the public policy
3 of Virginia Code 22.1-71 and 22.1-28. The circuit court
4 granted sovereign immunity to the School Board

Richmond

5 City away from its debt, and this posed a detriment to

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6 the general public that does business with the school
7 boards within the Commonwealth, and it also takes away
8 the authority of the General Assembly to draft and put
9 these codes in place for us to follow.

10 And under the rules and under the codes, it
11 states it is clear that a school board is a corporate
12 power that possess the authority to enter into a contract
13 that can sue and be sued, and the Court ignored the Code
14 by granting that they did a misapplication of that Code
15 governing the policy.

16 And in Jacqueline v. Fairfax County School
17 Board, the Court rendered that in Virginia, the
18 governance of each school division is vested in the
19 division school board, and Virginia Code 22.1-28 every
20 such school board had been declared a corporate body
and

21 has been vested with power to sue and be sued. And to
22 grant them sovereign immunity from their dept is a
23 discourse and a detriment from this policy, and could
24 have adverse impact on the general public conducting

25 business here.

1 In addition to that, another error of the
2 Court was the misapplication of Virginia Code 8.01-
195.2
3 on sovereign immunity for the Commonwealth of Virginia.
4 It's clear that the school board is not an agent of the
5 state, so they don't possess this same immunity or
6 sovereign immunity as a government agency.

7 THE COURT: Dr. Crawford, may I ask you an
8 actual question?

9 DR. MARLA CRAWFORD: Yes.

10 THE COURT: So the school board sort of
11 recoiled because this assessment, the bill was higher
12 than what they typically see. Can you help me
understand

13 that? With this assessment why was that the case? Was
14 it just some additional factors? Things that you had to
15 do?

16 DR. MARLA CRAWFORD: Well, I was in full

17 compliance with agents acting on behalf of the school

18 board. They gave me the hours to come into the

building.

19 They actually scheduled me for 33 hours on site, so you

20 think I have to write up 33 hours of work.

21 In addition to that, the assessments call for

22 observations outside, because the child had multiple

23 disabilities, they called for interviews, it calls for --

24 THE COURT: I don't mean to cut you off. But

25 basically it was just a more complicated case than what

1 you typically, see?

2 DR. MARLA CRAWFORD: Right. And it would not

3 -- normally what the school board will do, the school

4 board will approach the entity and try to negotiate a

5 fee, they didn't do that. They just scheduled me, and

6 all parties agreed and understood that it was to be paid,

7 so I did the work.

8 Nothing was ever discussed about the cost of

9 it because I was a vendor of the school board, so they

10 had my fees, they had my license, they had everything
11 that they needed about me and so I did work, and then I
12 submitted the bill based on my hourly rate, which was
13 \$250 an hour for a total of 116 hours worth of work on
14 site and off site, so that's how that bill became.

15 And I was willing to negotiate it down to
16 \$12,000 and then allow the difference to be allocated to
17 the school board for a scholarship for students, but
18 counsel interfered with that process, and that's why we
19 wind up in court.

20 So with that being said, as we go back to
21 that, the Court was in non-compliance of Rule 1.1 of this
22 court when it comes to jurisdiction. The 21-Day Rule is
23 something that is really a strong precedence for the
24 Commonwealth of Virginia.

25 The Court entered a Board order on January 10

1 of 2020, which was 24 days after it issued its ruling for
2 sovereign immunity, so that Court acted outside of its
3 jurisdiction and abused its discretion.

4 But if we allow that to stand and let that
5 become case law, it's going to open a flood gate for the
6 Commonwealth of Virginia. You would not have cases being
7 adjudicated. Imagine what would happen to the criminal
8 justice system, and the courts, when it gets out that the
9 circuit court can actually try to extend this
10 jurisdiction once it's expired, think about all of, think
11 about the detriment. There will be never be an
12 adjudication in any matters. And it's appalling, and it
13 takes away the authority of this Court and the oversight
14 to uphold this Court's decision because it become case
15 law. So what's happening in this matter, we filed the
16 case law that could be a detriment to the general public
17 and the Commonwealth as a whole.

18 In addition to that, you're talking about removing
19 Congress' authority which it's come IDEA, and the
20 expense
21 of these independent evaluations at the expense of the
22 public and not the parents. When you are talking about
23 making current case law that can cause a detriment to

23 that, and also eventually have an adverse, this
24 particular case, if it becomes case laws in Virginia, it
25 will open the flood gates for the federal government to

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1 deny special education funding to the Commonwealth of
2 Virginia, and then the State would be completely
3 responsible because this is a part of the guidelines
4 because the State can become, the Department of
5 Education, the State can become sanctioned for this.

6 So this case is bigger than me, it's bigger than
7 this bill. This is a case founded on the premise of the
8 rules for this case, the federal mandates under IDEA and
9 the codes governing public policy. And if we allow this
10 to become case law, it will be a detriment and the flood
11 gates will open, and that's something that we need to
12 work and try to prevent.

13 So I pray that this Court grants my petition and
14 remand this case back for adjudication. And if the lower
15 court correct its error, or using its authority and
16 discretion to correct the errors, and order me to present

17 the total expenses along to the circuit court so they can
18 enter a judgment. And I thank you for giving me your
19 time.

20 JUSTICE POWELL: Thank you, Dr. Crawford.

21 Your time has expired. The clerk will notify you of our
22 decision.

23 DR. MARLA CRAWFORD: Thank you. Have a great
24 day.

25 JUSTICE POWELL: You too.

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1 (OFF THE RECORD AT 10:04.)

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1 COMMONWEALTH OF VIRGINIA:

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3 CERTIFICATION

4 I, Stayce Lawson, a court reporter, do hereby certify

5 that the foregoing transcript was prepared by me, and

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6 this transcript is a true record of the proceeding as

7 stated.

8 I further certify that I am not of counsel to any of

9 the parties, not or any way interested in the outcome of

10 this action.

11

12 As written as my hand and notarial seal this 1st day

13 of June 2022.

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18 Stayce Lawson, Court Reporter

19 My Commission Expires: May 31, 2023

20 #369918

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RECEIVED AND FILED
CIRCUIT COURT

2:28 APRIL 02 2019
EDWARD JEWETT, CLERK
By CW D.C.

Virginia:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

DR. MARLA FAITH CRAWFORD,

PLAINTIFF

v.

Case No. CL18004077-1

SCHOOL BOARD FOR RICHMOND CITY,

DEFENDANT

RESUBMISSION OF MOTION FOR SUMMARY

JUDGMENT

Upon the advisement of this court, the Plaintiff, Dr. Marla Crawford, resubmit her motion for summary judgment based on quantum meruit under the following grounds:

- A. No new evidence has been obtained from the Defendant or the Plaintiff that's in dispute during the initial discovery phase as it pertains to this matter before this Court.
- B. No new issues of dispute that pertains to this matter before this Court has been raised.
- C. The Defendant is repeating itself of issues that have been addressed before this Court.

D. The material facts (Plaintiff performed the work, Defendant's agents facilitated the work, the Defendant has admitted that it's responsible for payment of work performed, the Plaintiff was ordered to perform the work, the Plaintiff participated in a meeting in April 2018 and gave her findings and recommendations to the agents acting on behalf of the Defendant) have been presented before this Court are not in dispute.

E. Rule 3:20. Summary Judgment. Any party may make a motion for summary judgment at any time after the parties are at issue. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings...that the moving party is entitled to judgment, the court shall enter judgment in that party's favor. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages.

F. The Plaintiff moves for summary judgment in quantum meruit because recovery is based on an implied contract to

pay for services rendered. *Mongold v. Woods*, 278 Va. 196, 203 (2009). It applies when nothing is said about compensation. *Id**, at 203

Conclusion. Wherefore, the Plaintiff prays that this Court grants the motion for summary judgement in quantum meruit under Rule 3.20.

s/Dr. Marla Faith Crawford, *pro se*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was sent electronically on this 2nd day of April, 2019 and mailed via First- Class US Mail.

To: *Counsel for School Board for Richmond City*

Jeremy D. Capps, Esq.

Melissa Y. York, Esq.

Harman, Clayter, Carrigan & Wellman

P.O. Box 70280

Richmond, Virginia 23255

804-747-5200- Phone

APP. 213

jcapps@hcew.com

myoark@hceow.com

s/Dr. Marla Faith Crawford

Dr. Marla Faith Crawford, *pro se*

Elite Educational Consulting

6523 South Stevens Hollow Drive

Chesterfield, Virginia 23832

Tel.: (804) 397-4480

eliteeducationalconsulting9 @gmail.com

#5000095
11/3/17

APP. 214



301 North Ninth
Richmond, VA 23219-1927
tel: (804) 780-7095
fax: (804) 780-7982

**REQUEST FOR TAXPAYER IDENTIFICATION NUMBER
(W-9 Form)**

Pursuant to Internal Revenue Service Regulations, you must furnish your Taxpayer Identification Number (TEN) to Richmond Public Schools. If this number is not provided, you may be subject to a 28% withholding on each payment. To avoid this 28% withholding and to ensure that accurate tax information is reported to the Internal Revenue Service, please use this form to provide the requested information.

Individual Owner's Name Dr. Marla Faith Crawford

Legal Business Name (if applicable) Elite Educational Consulting

Address 6523 Stevens Hollow Drive

Chesterfield, Virginia 23832

NINE (9) DIGIT TAXPAYER IDENTIFICATION NUMBER -

EMPLOYEES SHOULD PROVIDE THE 6-DIGIT***

RPS Employee ID# (6 Digit) Soc. Sec.# 4623 203149

AND NOT THEIR SOCIAL SECURITY NUMB term 1/07/05**

Federal Employer: Number _____

BUSINESS DESIGNATION (check nothing if you are a

Individual 'not operating a business')

Sole Proprietorship Personal Service Corporation

Is this firm (business) 51 percent or more owned and operated by a

minority? Yes No

Certified M.B.E., By Whom? Certification No. _____

Check appropriate minority group of your firm (business):

American Native/Aleut Female NF American Native/Aleut

American Native/Aleut Female NF American Native/Aleut Male

N_nMO

Black/Afro American Female BF

Male BM

Asian/Pacific Female AF

Asian/Pacific Male AM

Hispanic Female HF

Hispanic Male HM

Physical Impaired Female PF

Physical Impaired Male PM

Do you have a current City of Richmond business license? No

Is your business located within the City of Richmond, Virginia? No

PRINCIPAL BUSINESS ACTIVITY (*List Type of Service or Product Provided*) Educational

Under penalties of perjury, I declare that the information Provided true, correct, and completed to the best of my knowledge and belief.

Name and Tithe (Print or Type). Dr. Marla Faith Crawford-Owner

Signature s/Dr. Marla Faith Crawford Date 10/27/17 Telephone #

(804)397-4480 E-Mail Address mcrawford@capellauniversity.edu

Are you a current Richmond Public School employee or a retiree?

No

For Office Use Only:

Budget Holder Approval Signature

Organization# 6100

Revised: 12/16

s/KC

11/21/17

APP. 217



Richmond Public Schools
Angela C. Wilson
Clerk of the School Board
awilson9@rvschools.net

VIA Electronic Mail

October 29, 2018

Dr. Marla Crawford
Elite Educational Consulting
6523 South Stevens Hollow Drive
Chesterfield, Virginia 23832
eliteeducationalconsulting93@gmail.com

Dear Dr. Crawford:

Richmond Public Schools (RPS) received your request for records, via electronic mail on October 29, 2018. Your request consisted of the following:

1. The w-9 filed with Richmond City Public Schools in 2017 by Dr. Marla Faith Crawford/Elite Educational Consulting.

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As provided by Virginia Code §2.2-3704(B)(2), the requested records are being provided in part and withheld in part.

Specifically, the records are being withheld pursuant to Virginia Code §2.2-3815, as the records contain confidential personal information.

2. Documentation/date that the said consulting business became a registered vendor with Richmond Public Schools in 2017.

As provided by Virginia Code §2.2-3704(B)(2), the requested records are being provided in part and withheld in part.

Specifically, the records are being withheld pursuant to Virginia Code §2.2-3815, as the records contain confidential personal information.

Please contact me at (804) 780-7716 with any questions or concerns.

Sincerely,

s/Angela C. Wilson

Angela C. Wilson

c: Mrs. Dawn Page, Chairman

Mr. Jason Kamras, Superintendent

Ms. Kenita Bowers, Public Information Officer

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Attorney

File

Resilience. Pride. Success

301 North Ninth Street - Richmond, VA 23219-1927 « TEL:
804.780.7716 » FAX: 804.780.8133 » rvschools.net

1 VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF
RICHMOND

2

3

4 _____)

5 MARLA FAITH CRAWFORD)
5) Case No.

vs.) CL18004077-00

6)

RICHMOND CITY PUBLIC)

SCHOOLS)

7 SCHOOL BOARD FOR RICHMOND)

CITY) JASON KAMRAS,)

SUPERINTENDENT)

8)

9 _____)

10

11

12

APP. 221

13 Complete transcript of testimony and other incidents in the

14 above, when heard

15 November 9, 2018, before

16 The Honorable Richard D. Taylor, Judge.

17

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19

20 CRANE-SNEAD & ASSOCIATES

21 4914 Fitzhugh Avenue

22 Room 203

23 Richmond, Virginia 23230

24 (804)355-4335

25

2

1 APPEARANCES:

MS. MARLA CRAWFORD

2 Pro Se

3 MS. MELISSA YORK

Harmon Claytor Corrigan Wellman

4 4951 Lake Brook Drive

Suite 100

APP. 222

5 Glen Allen, Virginia 23060

Counsel for the Defendants

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1 THE COURT: This is Crawford vs. Richmond City

2 Public Schools, CL18-4077. The parties will note their

3 appearance for the record.

4 MS. CRAWFORD: Yes, Your Honor. I'm

5 Dr. Marla Crawford, owner of Elite Education Consulting.

6 THE COURT: Thank you, Dr. Crawford.

7 MS. YORK: Good morning. Melissa York, attorney for

8 Harman, Claytor, Corrigan and Wellman on behalf of the

9 defendants.

10 THE COURT: All right. Ms. York, let's do this:

11 Let's start off by talking about the posture of the case at

this

12 time and what's before the Court.

13 MS. YORK: Yes, Your Honor.

14 THE COURT: I will give you both a chance to talk.

15 After she says what she is going to share with the Court,

then

16 we will talk about you and whether or not you anticipate
17 becoming represented by counsel or just what that status is.

18 MS. YORK: Your Honor, the complaint has been filed.

19 An answer was filed on behalf of the School Board for the

City

20 of Richmond. We filed a demurrer on behalf of Jason Kamras,
the

21 superintendent, and appearing especially a demurrer on behalf
of

22 Richmond Public Schools. Those two matters are noticed for
23 hearing today, Your Honor.

24 Dr. Crawford has also issued several witness

25 subpoenas for today's hearing. We filed a motion to quash
those

1 subpoenas. Because this is a demurrer hearing, there's no
2 evidence to be taken at this hearing; the witnesses need not
3 appear. Those witnesses are available should the Court require
4 them to come to court today, but because this is a demurrer
5 hearing, that's what is noticed, I didn't see a need for them to

6 appear.

7 She subpoenaed the superintendent, two principals,
8 the director of exceptional education, a case manager and a
9 compliance officer. I do have those folks available by phone if
10 Your Honor requires them to come to court, but they are not
here

11 at this point in time.

12 We are prepared today to go forward on our
13 demurrers. It's our position that only the school board for the
14 City of Richmond is an appropriate defendant for this action.
15 We would ask that a trial date be set to give the opportunity --
16 give the parties an opportunity to conduct discovery. I
17 anticipate having an expert to testify in the trial and then
18 have a trial at a date in the future.

19 THE COURT: All right. Dr. Crawford, is that your
20 understanding of the posture of the case is, where we are at
21 this point?

22 MS. CRAWFORD? In part, Your Honor. This -- today's
23 court date was a mutually agreed upon court date between Ms.
24 York and myself because when I originally filed the case, the

25 complaint against the school district -- the school board for

5

1 owing the monies for services rendered, one of the issues that
2 came up with Ms. York is that she said well, first, she didn't
3 know about the date but I had already notified her client of the
4 date. It was prior to the -- them retaining her for this case.

5

6 When that came about, Ms. York indicated she was
7 unable to appear on October 12. And I said well, you have
8 Jeremy Capps as a co-counsel. He knows the case very well.

He

9 can appear. Then she came back and she indicated he's going to
10 be out of town that day, too.

11 Working with the secretary for the Judge's court, we
12 came to this mutually agreed upon date for the hearing as
well

13 as the demurrer, because Ms. York asked if the Court could at
14 least give her 30 minutes to answer and respond to the motion
15 for the demurrer. It's Ms. York is misleading the Court on the
16 facts as to why we are here because this is -- and it's on the

17 docket as well that this is a hearing. This was a mutually
18 agreed upon date. I'm prepared to go forward.

19 In all essence, the school district has been -- I've
20 been in collection with the school district in this matter since
21 May of 2018. And this case was originally filed in the
22 Chesterfield County Circuit Court. And one of the issues that
23 Ms. York had in defending her client was jurisdiction. So I
24 voluntarily did a nonsuit on the case.
25 Ms. York and her law firm has been involved with

6

1 this matter since around, I'm going to say approximately June
2 of
3 2018. They had ample enough time, and the witnesses that I
4 have
5 subpoenaed have direct involvement in the case that would
6 substantiate my position that can also--I have the proof of
7 burden on this court. Not only do I have a proof of burden, but
8 I have the proof of persuasion.

7 That's why these witnesses have been subpoenaed
8 because they have direct involvement with this matter. That's

9 why we are here today, partially on the motions she filed and to
10 hear the case.

11 THE COURT: All right. I have a couple of
12 observations; the first is, and I will tell you as I do all pro
13 se litigants involved in these matters, that you're at a
14 distinct disadvantage when you are not represented by an
15 attorney. The motions practice can be a little tricky even for
16 veterans of the courts and so it would be in your interest to be
17 represented by an attorney in these matters. That's the first
18 thing.

19 But should you choose not to be represented by an
20 attorney and to proceed to represent yourself, of course, you're
21 entitled to that. I have no problems with making sure that
22 you're absolutely made aware of the status of the case, the
23 nature of the proceedings that are before us and what we are
24 looking at. But I cannot be your attorney, just like I can't be
25 their attorney either, or put my finger or either of the scales

1 to help one or the other of the parties.

2 It appears that what is before me today, based on

3 both of your representations and what's in the file, there's the
4 motion to quash the subpoenas with regards to the witnesses.
5 And so for today, on the demurrer, Counsel for the City, in
6 making special appearance I guess, too, for the superintendent.

7

8 MS. YORK: Your Honor, I represent the
9 superintendent. We filed a demurrer on behalf of the --
10 THE COURT: Richmond Public Schools. Okay. I had
11 that in reserve.

12 MS. YORK: Correct.

13 THE COURT: They're arguing with regards to the
14 legal sufficiency of your complaint and certain claims that will
15 be made there. For that, I'm not convinced based on what I
have

16 seen that we need those witnesses. This will not be the trial.
17 This is a straightforward motion with regards to legal
18 sufficiency. And we can address that. And so we will do that
19 that way.

20 The demurrs are Ms. York's, Attorney York's. We
21 will let her start. She will explain and argue why it is she's

22 here and what problems she believes your case presents and I
23 will give you an opportunity to make your legal argument with
24 regards to her demurrer and then I rule. That's how we'll do
25 that.

1 But it's not a trial. It is here, and it's properly
2 noted for the demurrer.

3 At any time you have any questions about where we
4 are, what we are doing, just ask.

5 MS. CRAWFORD: Yes, sir.

6 MS. YORK: As I indicated to the Court, we filed --

7 THE COURT: I'm sorry. After all that talking I did
8 about an attorney, is it your decision to go forward today not
9 being represented by counsel or would you rather we come
back

10 where you can be represented by counsel?

11 MS. CRAWFORD: I would rather go forward, Your
12 Honor. Thank you.

13 THE COURT: Okay.

14 MS. YORK: Thank you, Your Honor. As I indicated,

15 we filed two demurrs. The first, the school board appearing
16 specifically on behalf of Richmond City Public Schools. The
17 complaint appears to name three defendants, Richmond City
Public

18 Schools, the School Board for the City of Richmond and Jason
19 Kamras, the superintendent. The School Board appearing
20 specially on behalf of Richmond City Public Schools has filed
a
21 demurrer.

22 The basis for that demurrer is that Richmond City
23 Public Schools is not a legal entity. The proper entity is the
24 School Board for the City of Richmond and because Richmond
City
25 Public Schools is not a legal entity capable of suing and being

1 sued, it is appropriate to dismiss it from the lawsuit at the
2 demurrer stage, and in our demurrer we cited several cases in
3 which courts have held that the Richmond -- for example,
Louisa

4 County Public Schools is not a proper entity and cannot be
named

5 as a defendant.

6 Winchester Public School District is not a legal
7 entity and Fairfax County School Board is not – Fairfax
County

8 Public Schools is not a legal entity. The Virginia Code 22.1-71
9 has established that school boards as the body corporate and
10 Richmond City Public Schools is the appropriate entity.

11 Because Richmond City Public Schools is an entity
12 that does not exist, it cannot remain as a defendant in this
13 case. And for that reason, the demurrer should be sustained.

14 With respect to Jason Kamras, Your Honor, we also
15 filed a demurrer. Mr. Kamras is the superintendent for the
16 school system. And the basis for Dr. Crawford's complaint is
17 that a hearing officer at a due process hearing ordered that a
18 functional behavior evaluation be completed for a student and
19 ordered Dr. Crawford to complete that evaluation.

20 And under the Virginia Administrative Code, when an
21 independent educational evaluation is ordered, that

evaluation

22 is to be at the public expense and for that reason, it's the
23 school board who is liable for any potential expenditures
24 associated with that evaluation not Mr. Kamras, himself, the
25 superintendent. He's -- there's no basis in the complaint for

10

1 individual liability for this debt.
2 In fact, Mr. Kamras was not even the superintendent
3 at the time that the due process hearing took place and the
4 evaluation was ordered. Because only the school board is
5 responsible by law for the costs associated with the
evaluation,
6 the complaint does not state a claim against Mr. Kamras
7 individually.

8 We would ask that the demurrers be sustained, the
9 non-entity, Richmond City Public Schools, be dismissed, and
10 Jason Kamras, the superintendent, be dismissed and that the
case

11 proceed only against the School Board for the City of
Richmond,

12 which is the proper defendant.

13 THE COURT: All right. Dr. Crawford.

14 MS. CRAWFORD: Good morning.

15 THE COURT: Morning.

16 MS. CRAWFORD: I do recognize what

17 Ms. York has said. But it's also noted within the file, I filed

18 the motion to cure the defect in the caption and to cure the

19 defect in the caption, what I proposed in the filing is to -- it

20 was not my intent to sue Richmond City Public Schools,

because

21 that is an agency. That's a government agency.

22 The motion -- what I'm asking to do, I said I need

23 to take -- what I accidentally did was put an apostrophe behind

24 the S as -- a comma instead of an apostrophe. It should be

25 Richmond City Public School's School Board and Jason

Kamras. I

1 asked and requested to cure that defect in it and because I knew

2 the defect -- curing the defect won't hinder the case at all.

3 Ms. York had declined to support that curing of the

4 defect. I do want to offer that challenge in terms of removing
5 Richmond City Public Schools because it's my intent to have
an
6 apostrophe S and not a comma. I'm just trying to cure the
7 defect.

8 THE COURT: Okay.

9 MS. CRAWFORD: As far as Jason Kamras, there have
10 been opportunities in other cases beyond Virginia. I can
11 respect the scope of the Court and the position of the Court, if
12 it so do noted to want to remove Jason Kamras personally from
13 it. But I do know that superintendents are allowed to be
14 connected to the school board in a suit when there's a debt
owed

15 to a defendant -- I mean a plaintiff.

16 THE COURT: All right. Thank you. Would you like
17 to respond?

18 MS. YORK: Just briefly, Your Honor. With respect
19 to Dr. Crawford's request to amend the caption, she did reach
20 out and I indicated to her I was unable to agree to the request
21 because it still included Mr. Kamras in the caption as a

22 defendant and for the reasons previously stated, he's not a
23 proper defendant to this action.
24 Additionally, naming Richmond City Public School's
25 School Board for Richmond City, the entity's name is the
School

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1 Board for the City of Richmond. That -- the other qualifiers
2 are superfluous. I think it cleans it up and makes it clear
3 that the legal entity's name is the School Board for the City of
4 Richmond and that should be the only defendant in the matter.
5 There's no such thing as the Richmond City Public
6 School's School Board for the City of Richmond. The name is
the
7 School Board for the City of Richmond. Her request to amend
the
8 caption doesn't actually cure the defect.
9 THE COURT: All right. I will take a brief recess
10 and then I will come back out and tell you-all what we're going
11 to do. Are there any other matters before the Court other
than

12 these two?

13 MS. YORK: No, Your Honor.

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15 NOTE: At this point a recess was had.

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17 THE COURT: The Court had the opportunity to
18 consider the arguments with regards to the parties. It doesn't
19 appear that there is a huge difference in where the parties want
20 to end up, just a question of how to get there.

21 And so I appreciate Dr. Crawford's explanation with
22 regards to the scrivener's error, with regards to the apostrophe
23 versus the comma and the fact that she would still like to
24 include Dr. Kamras, but I will grant -- sustain the demurrs
25 with regards to Kamras and Richmond Public Schools for the

13

1 reasons given by counsel and dismiss as to them. That request
2 is granted.

3 And I will note, Dr. Crawford, your exception for
4 the record. And according to you-all, that disposes of what's
5 before the Court.

6 If you can get an order to the Court within --

7 that's fine.

8 Let me ask you-all this, too, and I'm not familiar

9 -- absolutely familiar with this program, because it's something

10 that I had not used while I was on the bench, but have you-all

11 considered the mediation services through the Supreme

Court and

12 whether or not this might be something that's appropriate for

13 that?

14 MS. YORK: We have not at this point, Your Honor.

15 We did -- there were some pre-litigation discussions. I did

16 attempt to have a discussion with

17 Dr. Crawford once I was involved in the case. But I think we

18 are kind of at an impasse where it's all or nothing -- an all or

19 substantially less amount. I'm not sure mediation is going to

20 be successful.

21 We would be probably open to using the judicial

22 settlement conference.

23 THE COURT: I'm going to see if the court -- the

24 judges here have a standard letter where they explain to the

25 parties about mediation, encourage mediation through the
Supreme

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1 Court service as a matter to keep in mind. It's not something
2 that the Court will force, but something that might be
3 appropriate in this case.

4 MS. YORK: Thank you, Your Honor.

5 MS. CRAWFORD: Your Honor, may I make a statement,
6 please.

7 THE COURT: Yes, ma'am.

8 MS. CRAWFORD: Your Honor, the reason that we are
9 here, of course you have that information in front of you, and
10 as Ms. York said, I attempted multiple times. I can say I
11 proposed almost eight different opportunities for the school
12 district, the School Board for Richmond City to settle this
13 matter for a lesser amount. I went so far in May --

14 THE COURT: I don't want you to get into --

15 MS. CRAWFORD: I'm not going to get into the
16 specifics of it. I went so far in May up until just recently of
17 sometime earlier that last week to try to offer something and

11 something to talk about, but if her demands are what they are
12 now, that was not going to happen.

13 THE COURT: Well, I just thought that I would
14 encourage folks to consider that. I will still make an inquiry
15 as to whether there is a letter that the judges of this court
16 use to make the parties aware of the services that the Supreme
17 Court offers and to suggest that the Court would be happy to
18 facilitate getting that mediation ball rolling if the parties
19 are amenable.

20 It's the kind of thing where it's never -- we never
21 ask people to proceed on it after their response is no. But I
22 think that it's an option that the Court may want to more
23 formerly make the parties aware of.

24 Dr. Crawford, you signed the order.

25 Ms. York signed has it. Attorney York has signed it, we ask
for

16

1 this. And then above your name and above your signature line,
2 is a spot that says seen, and then there's a blank. I noted
3 that -- I would note for you your exceptions to my ruling. And

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4 what you can do is where it says seen, you can put
objected to,

5 and then I'll sign it. That will reflect more accurately what
6 took place here today.

7 And I would note finally, if there's nothing else,
8 that we have two court reporters here. You-all may want
to talk

9 about that before the next hearing.

10 MS. YORK: Yes, Your Honor.

11 THE COURT: There being no other business before the
12 Court, we stand adjourned.

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2 **CERTIFICATE OF COURT REPORTER**

3

4 I, Loretta L. Larsen, hereby certify that I was the court
5 reporter in the Circuit Court of the City of Richmond,
6 Virginia,

7 on November 9, 2018, at the time of the hearing herein.

8 I further certify that the foregoing transcript is a true
9 and accurate transcript of the testimony and other
incidents of

10 the hearing herein as set down to the best of my ability.

11 Given under my hand this 13th day of November 2018.

12

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17 LORETTA LARSEN

18 CCR #0315097

19

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21 MY COMMISSION EXPIRES:

22 MAY 31, 2020

23

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