APPENDIX A

Order DN 32 from the district court which granted Woodford's summary DN 26 and denied Qiu's summary DN 25.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION (at Lexington)

WEI QIU, Plaintiff,
V.
BOARD OF EDUCATION OF WOODFORD COUNTY PUBLIC SCHOOLS, Defendant

Civil Action No.5:22-196-DCR

MEMORANDUM OPINION AND ORDER

Plaintiff Wei Qiu alleges that the Board of Education of Woodford County Public Schools (the "Board") discriminated against her and violated Title VII of the Civil Rights Act of 1964 (" Title VII") when it failed to offer her a teaching position because of her race, color, and national origin. However, the Board asserts that Qiu has failed to exhaust administrative remedies regarding certain claims, and that she has failed to state a prima facie case of discrimination under Title VII.

Both parties have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. 1 *1 Qiu also has moved for leave to file a sur-reply. She contends that the Board's reply*

introduces new arguments to which she should be allowed to respond. This motion will be denied for the reasons outlined below. [Record Nos. 25,26] For the reasons set forth below, the Board's motion will be granted and Qiu's motion will be denied.

I.

It is important to clarify at the outset the relevant time period and breadth of claims that the Court is reviewing. Under Title VII, a plaintiff alleging employment discrimination must file an administrative charge with the EEOC"within 180 days of the occurrence of the alleged unlawful employment practice." *EEOC v. Com. Off. Prods. Co.,* 486 U.S. 107, 110 (1988). This filing period is extended to 300 days in deferral jurisdictions 2 *2 A deferral jurisdiction is a state which has a state or local Fair Employment Practices Agency ("FEPA") authorized to enforce its state or local anti-discrimination laws* _including Kentucky - if the plaintiff initiates a timely complaint with the appropriate state agency. *Logan v. MGM Grand Detroit Casino,*939 F.3d 824,828(6th Cir. 2019). However, "[d]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges." *Nat'l R.R. Passenger Corp. v. Morgan,* 536 U.S. 101, 113 (2002). Refusal to hire is a discrete act. Id. at 114.

Qiu's Charge of Discrimination (the "EEOC Complaint") was filed with the Kentucky Commission on Human Rights and the EEOC on or about December 15, 2021, entitling her to a 300-day statute of limitations on discrimination alleged pursuant to 42 U.S.C. § 2000e-5(e)(1). As such, Qui's earliest actionable claim against the Board could be no earlier than February 18, 2021. All earlier claims would be time barred. The particulars of Qiu's EEOC Complaint refer only to the Woodford County High School's physics teacher position for which she applied "[o]n or about March 31, 2021". [Record No.26-1,p.11] Thus, on the allegations in Qiu's EEOC Complaint and the statute of limitations imposed by 42 U.S.C.§ 2000e-5(e)(1), the only claim properly before the Court relates to Qiu's allegation that the Board discriminated against her based on her race and national origin3 *3 While several of Qiu's later filings also include discrimination based on color, only race and national origin were checked in her EEOC Complaint* when it failed to hire her for the physics teacher vacancy posted on March 24, 2021. While allegations of earlier discrimination serve to fully inform the Court and provide useful background, those claims are not properly before the Court and will not be adjudicated.

II.

The Board posted a position for a high school science teacher on April 22, 2020, and Qiu was among the applicants for that position. However, due to the COVID-19 pandemic and resulting state-mandated school closures, the Board discontinued its applicant search without extending any interview offers. It again posted a high school science teacher vacancy on August 18, 2020, and it is uncontested that Qiu again tendered an application for the position. But the the continued impact of COVID-19 and the school district's decision to offer virtual/remote learning resulted in the applicant search once again being discontinued and a retired Woodford County High School ("WCHS") teacher was utilized in a long-term substitute teacher role to fulfill the school's needs.

On March 24, 2021, the Board posted a vacancy for a physics teacher at WCHS-the vacancy at issue. Plaintiff Qiu applied for this vacancy despite not being certified to teach physics in the Commonwealth of Kentucky. She described herself as"qualified to be certified to teach physics " [Record No. 25,p.3] Already certified to teach chemistry, Qiu believed she was qualified to teach physics and could be certified through one of the Education Professional Standards Board's ("EPSB") alternative pathways to teacher certification - Option 7: Institute Alternative Route.

See KRS 161.048(8)(b)(2)(2017) Qiu was not offered an interview.

Hoping to further the school's engineering program, the WCHS administration offered the position to a candidate with an engineering degree who was enrolled in an ESPB - approved teacher preparation program.4 *4 The program was an approved pathway to teacher certification under Option 6: University Alternative Program. KRS 161.048(7) (2017).* That candidate, a white native-English speaker, ultimately withdrew from the hiring process and no other candidates were interviewed.

On December 15, 2021, Qiu filed a Charge of Discrimination ("EEOC Complaint") with the Kentucky Commission on Human Rights alleging she was not hired for the March 24, 2021, physics teacher vacancy due to her race (Asian) and national origin (Chinese). [Record No. 27-1,p.11] The EEOC Complaint does not make reference to the teacher vacancies in April 2020, August 2020, or May 2021. Qiu received an EEOC Notice of Right to Sue letter on May 17, 2022. She filed a timely Complaint with this Court on July 29, 2022.

In response to the Board's motion for summary judgment, Qiu submitted a response to which the

Board tendered its reply. Qiu alleges that the Board's reply introduces new legal arguments, so she has filed a motion for leave seeking the Court's permission to tender a sur-reply. [Record No.31]

III.

"When new submissions and/or arguments are included in a reply brief, and the nonmovant's ability to respond to the new evidence has been vitiated, a problem arises with respect to Federal Rule of Civil Procedure 56(c). " *Seay v. Valley Auth.*, 339 F.3d 454,481(6th Cir. 2003). When this occurs, "the district court should allow the nonmoving party an opportunity to respond, particularly where the court's decision relies on new evidentiary submissions." *Id.*at 481-82.

Qiu argues that she should be permitted to file a sur-reply because the Board "applied new law to disqualify Qiu's qualification for the position, citing KRS 161.048(8)(b)(2) for the first time in Line 3 in Page 3 in its Reply." [Record No.31] This argument, however, is without merit.

KRS 161.048(8)(b)(2) refers to a requirement of the Education Professional Standards Board's "Option 7: Institute Alternative Route" to teacher certification. Qiu refers to this very policy in her summary

judgment motion, and even appends it to her response to the Board's Cross Motion for Summary Judgment. [Record Nos. 25; 28-2, p.5] Further, in the Board's Motion for Summary Judgment, the Board directly challenges Qiu's qualification under Option 7,specifically highlighting the requirements of KRS 161.048(8)(b)(2). [Record No.27,p.11 & n.6] Qiu fails to demonstrate that the Board introduced new legal arguments in its reply brief; therefore, her motion for leave to file a sur-reply will be denied.

IV.

Summary judgment is appropriate when the moving party demonstrates that there is no genuine dispute regarding any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once this showing is made, the burden shifts to the nonmovant. The nonmoving party may not simply rely on his pleadings but must "produce evidence that results in a conflict of material fact to be resolved by a jury." *Cox v. Ky. Dept. of Transp.*, 53 F.3d 146, 149 (6th Cir.1995). In other words, the nonmoving party must present significant probative evidence that establishes more than some metaphysical doubt as to the material facts." *Golden v. Mirabile Invest. Corp.*, 724 F. App'x 441, 445 (6th Cir. 2018) (citation and alteration omitted).

The Court affords all reasonable inferences and construes the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio CCorp.*,475U.S. 574, 587 (1986). However, a dispute over a material fact is not "genuine" unless a reasonable jury could return a verdict for the nonmoving party. Further, the Court may not weigh the evidence or make credibility determinations but must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*,477 U.S. 242, 251-52 (1986); *see also Moran v. Al Basit LLC,* 788 F.3d 201, 204 (6th Cir.2015). And the existence of a scintilla of evidence favoring the nonmovant is not sufficient to avoid summary judgment. *Anwar v. Dow Chem. Co.*,876 F.3d 841,851(6th Cir.2017)(citing Anderson,477 U.S. at 252).

A.

It is unlawful under Title VII for an employer "to fail or refuse to hire" any individual due to "such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). A plaintiff can prevail in a Title VII claim by either direct or circumstantial evidence. *Ondricko v. MGM*

Grand Detroit, LLC,689 F.3d 642, 648-49 (6th Cir.2012). Direct evidence is that "which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor." *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp,* 176 F.3d 921, 926 (6th Cir. 1999). Circumstantial evidence allows for a fact to be inferred but doesnot necessitate such an inference. See *Wexler v. White's Fine Furniture, Inc.,* 317 F.3d 564,570(6th Cir.2003).

Qiu claims that, despite being qualified for the physics teacher vacancy, she was neither interviewed nor hired. She alleges that the Board offered the position to a less-qualified applicant because he is a white native-English speaker. Qiu incorrectly asserts this theory as direct evidence of discrimination. "Conclusory statements unadorned with supporting facts are insufficient to establish a factual dispute that will defeat summary judgment." *Alexander v. CareSource,* 576 F.3d 551, 560 (6th Cir. 2009). However, in recognizing that a document filed pro se is " to be liberally construed," the Court affords Qiu's observation the weight of circumstantial evidence of discrimination. See *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

B.

The *McDonnell Douglas/Burdine* framework applies when a plaintiff alleging discrimination

relies on circumstantial evidence. *Lindsay v. Yates,* 498 F.3d 434,440 n.7 (6th Cir. 2007). A plaintiff must first establish a prima facie case of disparate treatment under this framework. *Texas Dep of Comm. Affairs v. Burdine,* 450 U.S. 248, 253 (1981). To do so, she must demonstrate that: "(1) [s]he is a member of a protected class; (2) [s]he was qualified for [her] job; (3) [s]he suffered an adverse employment decision; and (4) [s]he was replaced by a person outside the protected class or treated differently than similarly situated non-protected employees." *White v. Baxter Healthcare Corp.,* 533 F.3d 381,391 (6th Cir.2008).

As an Asian and of Chinese national origin, Qui is a member of a protected class. However, the Board disagrees with her claim that she was qualified for the physics teacher position. "A discrimination plaintif's generic testimony that she was qualified for a position, ... does not suffice to withstand summary judgment on that qualification issue without specific facts supporting this general testimony." *Alexander,* 576 F.3d at 560.

Qiu describes herself as "a certified chemistry teacher...highly Praxis qualified to teach physics and math," and "qualified to be certified to teach physics." [Record No.25,pp.1,3] In support of her motion for summary judgment, she notes that she is "eligible to

be certified to teach physics or math by Institute Alternative Route policy of the Education Professional Standards Board (EPSB). " [Id. at 2] But Qiu's only supporting evidence of her qualification consists of a page appearing to highlight her prior Praxis scores and what appears to be an EPSB explainer outlining the Option 7: Institute Alternative Route to teacher certification. This is insufficient to demonstrate that Qiu was a qualified candidate for the high school physics teacher position.

First, even if Qiu had submitted a certified copy of her Praxis scores demonstrating proficiency in hysics, the scores provided had expired for purposes of teacher certification. Pursuant to 16 KAR 5:020, "A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date.5 *5 At the EPSB Meeting on July 11, 2022, the Board voted unanimously to allow ten-year recency for admission assessments under 16 KAR 5:020. However, when Qiu applied for the physics teacher position, the five-year recency requirement was in place. See Meeting Minutes, Action Item 2022-034, Education Professional Standards Board, Kentucky Department of Education (July 11, 2022).* The test upon which Qiu relies to demonstrate her proficiency in physics was taken May 7,2013 (a date some seven years before

applying for the vacancy here in issue). In addition, Qiu's s reliance on the Option 7: Institute Alternative Route for certification is misplaced because she is not eligible for this option. The Institute Alternative Route to certification is only available for initial certification, which is clearly stated on the EPSB explainer that she herself provided. [Record No. 28-2, p.5] In short, Qiu already possesses a certificate for teaching chemistry so Option 7 is not available to her. See KRS 161.048(8). Despite Qiu's attestation that she was a qualified candidate for the physics teacher position, the evidence provided indicates that she was not qualified.

Qiu is unable to establish a prima facie case of discrimination because she has failed to demonstrate that she was a qualified applicant. She cannot "simply replace the conclusory allegations in [her] complaint with more conclusory allegations" at the summary judgment stage. See *Floyd v. Sverdrup Corp.*, 23 Fed. App'x 223, 225 (6th Cir. 2001) (citing *Lujan v.* Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990)). As a result, the Board is entitled to a judgment as a matter of law. Fed.R. Civ. P.56(c).

V.

Based on the foregoing analysis and discussion, it is hereby ORDERED as follows:

1. Plaintiff Wei Qiu's motion for leave to file a sur-reply [Record No. 31]is **DENIED**.
2. Plaintiff Wei Qiu's motion for summary judgment [Record No.25] is **DENIED**.
3. Defendant Board of Education of Woodford County Public Schools motion for summary judgment [Record No. 26] is **GRANTED**.

Dated: September 27, 2023.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Danny C. Reeves, Chief Judge /s
United States District Court
Eastern District of Kentucky

APPENDIX B

Order D 19 from the circuit court which affirmed Order DN 32.

NOT RECOMMENDED FOR PUBLICATION
No. 23-6058

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU, Plaintiff-Appellant,
v.
WOODFORD COUNTY, KY BOARD OF EDUCATION, Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

ORDER

Before: BATCHELDER, GIBBONS, and McKEAGUE, Circuit Judges.

Wei Qiu, proceeding pro se, appeals the district court's judgment in favor of the Woodford County, Kentucky Board of Education (the Board) on her employment-discrimination claims. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a). For the following reasons, we affirm.

Around April 2020, Qiu, a Chinese woman, applied for a science teacher position at Woodford County High School (WCHS). WCHS removed the posting without extending interviews due to the COVID-19 pandemic. Qiu applied for another science teacher position at WCHS around August 2020, which WCHS later removed because of lingering uncertainties with the pandemic and virtual instruction. Instead of filling the position, WCHS utilized a retired employee as a long-term substitute teacher to meet the school's virtual learning needs. In March 2021, Qiu applied for a physics teacher position at WCHS. WCHS hired a candidate with an engineering degree, who was a white native-English speaker, for the position, without interviewing Qiu or any of the other four applicants. In May 2021, after the selected candidate withdrew from the hiring process, WCHS posted two science teacher vacancies, and Qiu did not apply for either.

Qiu filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), asserting that she applied for a physics position with WCHS in March 2021 and that the Board iscriminated against her by failing to interview her. The EEOC issued Qiu a right to sue letter in May 2022. She then sued the Board for violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17. She alleged that the Board discriminated against her

based on her race and national origin by failing to interview her for any of the three positions and that the Board removed the postings to avoid hiring a Chinese individual.

In considering the parties' cross-motions for summary judgment, the district court granted the Board's motion and denied Qiu's. The court reasoned that, based on Qiu's allegations to the EEOC and the relevant statute of limitations, the only claim that Qiu properly exhausted was her claim based on the March 2021 posting. The court reasoned that Qiu failed to show that she was qualified for the position and thus could not establish a prima facie case of discrimination. Qiu unsuccessfully moved for sanctions against the Board and to alter the order. The court permanently barred Qiu from future filings in the action without permission from the court after giving her an opportunity to contest the injunction.

On appeal, Qiu argues that her claims should have survived summary judgment because evidence of her Praxis physics score and her prior teaching experience show that she was qualified. She also argues that the court erred in not analyzing whether the Board discriminated against her for failing to interview her for the April and August 2020 postings. According to Qiu, the Board discriminated against her by refusing to interview her, a Chinese native, because

it was searching for a white, native English-speaking candidate and that the selected candidate was not qualified for the physics position. She argues that the district court should have issued sanctions against the Board because it lied in its filings and asserts that the district court was corrupt. Finally, she moves for a stay under Federal Rule of Appellate Procedure 8.

We review de novo the district court's order granting summary judgment. See *Smith v. City of Troy*, 874 F.3d 938, 943 (6th Cir. 2017) (per curiam). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A court reviewing a summary-judgment motion must draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

At the outset, we note that the district court correctly concluded that the only properly exhausted claim was Qiu's claim that the Board discriminated against her by failing to interview her for the March 2021 posting. Qiu failed to assert facts about the April 2020, August 2020, or May 2021 postings in her EEOC charge, and she does not dispute this fact on appeal. Where an EEOC charge fails to contain specific charges, a plaintiff is only permitted to raise

the new claims in a judicial complaint where "the factual allegations [are] sufficient to put the EEOC on notice" about the claims. *Dixon v. Ashcroft*, 392 F.3d 212, 218 (6th Cir. 2004). Qiu did not mention any other job posting in her EEOC charge. Rather, the EEOC charge specifically limited the facts underlying her discrimination claim to March 31, 2021. As such, to the extent that Qiu claims that the Board discriminated against her by failing to consider her April 2020 or August 2020 applications or by failing to reconsider her March 2021 application for the two new science teacher postings in May 2021, she did not "put the EEOC on notice" about these claims. *See id.*

As for her March 2021 claim, the district court properly granted summary judgment to the Board. Where a plaintiff claims she was not hired because of racial discrimination, the plaintiff must establish a prima facie case under a slightly modified version of the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), burden-shifting approach. See *Fuhr v. Sch. Dist. of Hazel Park*, 364 F.3d 753, 758 (6th Cir. 2004). If a plaintiff satisfies a prima facie case, the burden shifts to the defendant to show that it had a legitimate non-discriminatory reason for failing to hire the plaintiff. *McDonnell Douglas Corp.*, 411 U.S. at 802–04. If the employer articulates such a reason, the burden shifts back to the plaintiff to show that this reason is pretextual. *Id.*

The district court determined that Qiu failed establish a prima facie case of discrimination because she failed to show that she was qualified to teach physics at the time she applied for the physics teacher position in March 2021. Because we may affirm the district court's judgment on any basis supported by the record, see Angel v. Kentucky, 314 F.3d 262, 264 (6th Cir. 2002), even if we assume that Qiu presented a prima facie case of discrimination, she failed to show that the Board's proffered reasons for the adverse employment action were a pretext for discrimination. The Board met its burden to show a legitimate non-discriminatory reason for failing to hire Qiu by stating that it hired the selected candidate specifically because WCHS was searching for an individual with an engineering background to help build the school's engineering program. Because the selected candidate was the only applicant with engineering experience, his ability to fill the Board's teaching needs set him apart from the other applicants.

Accordingly, the burden shifted to Qiu to "prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination." *Levine v. DeJoy*, 64 F.4th 789, 798 (6th Cir. 2023) (quoting *Tex. Dep't of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981)). "A plaintiff will usually

demonstrate pretext by showing that the employer's stated reason for the adverse employment action either (1) has no basis in fact, (2) was not the actual reason, or (3) is insufficient to explain the employer's action." *Id.* (quoting White v. Baxter Healthcare Corp., 533 F.3d 381, 393 (6th Cir. 2008)). Where, as here, "'qualifications evidence is all (or nearly all) that a plaintiff proffers to show pretext, the evidence must be of sufficient significance itself to call into question the honesty of the employer's explanation' for its hiring decision." *Id.* (quoting *Bender v. Hecht's Dep't Stores*, 455 F.3d 612, 627 (6th Cir. 2006)).

Qiu failed to meet her burden to produce evidence of pretext. The record shows that the selected candidate possessed an engineering degree and was enrolled in a program that allowed him to "be employed as a teacher under a provisional teaching certification while attending a graduate-level teacher preparation program." The Board interviewed him and offered him the position without interviewing any of the other five candidates. Qiu, who was certified to teach chemistry, does not dispute that she was not certified to teach physics. Rather, she alleged that she would "be licensed for physics when she teaches physics by related Kentucky policy" and would be "qualified to be certified to teach physics." Thus, she faults the Board for selecting a candidate who was not certified to teach physics, while simultaneously

acknowledging that she also was not certified to teach physics. Further, Qiu does not dispute that she did not hold an engineering degree. Her arguments focused on her general teaching degree, her experience teaching chemistry, and her 2013 Praxis physics testing.

Qiu's "subjective view of her qualifications in relation to those of the other applicants, without more, cannot sustain a claim of discrimination." *Hedrick v. W. Rsrv. Care Sys.*, 355 F.3d 444, 462 (6th Cir. 2004). Simply put, Qiu's allegations and evidence regarding her qualifications and those of the selected candidate are insufficient to call into question the honesty of the Board's explanation. See *Levine*, 64 F.4th at 798.

Next, we review the denial of Federal Rule of Civil Procedure 11 sanctions for an abuse of discretion. *See Montell v. Diversified Clinical Servs., Inc.*, 757 F.3d 497, 510 (6th Cir. 2014). Rule 11 sanctions are warranted only where a party's conduct was objectively unreasonable" or there was no "reasonable basis for" the claims. *Id.* Qiu has failed to show that the Board lied in any of its filings or that it proceeded in an "objectively unreasonable" way, and, accordingly, the district court did not abuse its discretion in denying her requested relief. *Id.*

To the extent that Qiu argues that the district court impermissibly ruled in the Board's favor because it was corrupt and biased against her, she presents no evidence to support these allegations except the court's rulings. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Nothing here warrants a departure from the usual rule.

Finally, we deny as moot Qiu's motion for a stay of the district court's judgment. See Fed. R. App. P. 8(a)(2)(A)(i) (explaining that a party may move a court of appeals for a stay where "moving first in the district court would be impracticable"). Qiu's conclusionary allegations of bias are insufficient to show that filing in the district court would be "impracticable." *Id.* And the district court didn't make motions practice impracticable by requiring Qiu to show a nonfrivolous legal basis for her motions before filing them.

For these reasons, we AFFIRM the district court's judgment. Qiu's Rule 8 motion is DENIED as moot.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk s/

APPENDIX C

Order D 22 from the circuit court which denied Qiu's petition to rehear.

No. 23-6058
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WEI QIU, Plaintiff-Appellant,
v.
WOODFORD COUNTY, KY BOARD OF EDUCATION, Defendant-Appellee.

ORDER

BEFORE: BATCHELDER, GIBBONS, and McKEAGUE, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT
Kelly L. Stephens, Clerk s/

APPENDIX D

Order DN 40 issued from the District Court which denied Qiu's 59(e) motion.

5:22-cv-00196 Doc #: 40 Filed: 11/21/23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION (at Lexington)

WEI QIU, Plaintiff.
V
BOARD OF EDUCATION OF WOODFORD COUNTY PUBLIC SCHOOLS

Civil Action No. 5: 22-cv-196-DCR

MEMORANDUM OPINION AND ORDER

A final Judgment was entered in favor of Defendant Board of Education of Woodford County Public Schools (the "Board") on September 27, 2023. [Record No.33] Plaintiff Wei Qiu then moved for sanctions against Grant Chenoweth, the Board's counsel, on October 10, 2023. [Record No. 34] Next, Qiu filed a motion on October 17, 2023, to alter the Memorandum Opinion and Order granting the Board summary judgment. [Record No.35]

Qiu's motion for sanctions will be denied because she fails to state with any particularity grounds for the motion or offer a legal argument to support the imposition of sanctions. Qiu's motion to alter the

Memorandum Opinion and Order granting the Board summary judgment will be denied for the same reason. In addition, Qiu will be directed to tender a written explanation regarding why the Court should not impose prefiling restrictions.

I.

Qiu moves for sanctions against Attorney Chenoweth on two grounds. First, she contends that he spoliated evidence to aid in misrepresenting the qualifications of another applicant for the physics position in issue. Second, Qiu claims that Chenoweth misrepresented the law to disqualify Qiu for the physics position. Even if these arguments had merit, which they do not, neither assertion has any relevance to the outcome of this case. However, to provide a fully-developed record, the Court will address both assertions.

A.

Qiu alleges that Chenoweth falsely indicated that the Board's chosen applicant was a qualified candidate because he was "enrolled in an 'Option 6' program." [Record No.34-2, p. 1] She then suggests that Chenoweth spoliated evidence by redacting the academic enrollment dates of the applicant to obscure the fact that he was not qualified at the time he was selected.

Chenoweth responds by noting that redactions were intended solely to protect the identity of the individual applicant, consistent with guidance from the Kentucky Attorney General's Office. *See* 00-ORD-090. He further states that, consistent with Option 6, the applicant "only needed to have registered for [a teacher preparation] program at the time he applied," and the applicant had done so. [Record No.36, p.3]

A person can be "enrolled," *i.e.*, officially registered, in a program despite not yet attending classes. *See Jefferson Cnty. Bd. of Educ. v. Fell,* 391 S.W.3d 713, 720 (Ky. 2012) ("Indeed, 'enroll' and 'attend' are not synonymous."). Under Option 6, a student receives a one-year provisional certificate "concurrently with employment as a teacher in a local school district," KRS 161,048(7) (2017) (emphasis added). Accordingly, an applicant would not have to begin attending Option 6 classes until he or she was hired and teaching. The applicant's resume, which Qiu herself submitted in the record, indicates that the applicant was "enrolled in the Option 6 MAT program at the University of the Cumberlands" and that he"will dual certify in Physics and Math."[1] [1] The resume uses both present tense (is enrolled) and future tense (will certify) to demonstrate that the applicant was enrolled in the Master of Arts in Teaching ("MAT") program at the University of the Cumberlands and intended to participate in the university's EPSB-approved Option 6 programs for Physics (Course Code

290) and Math (Course Code 210). [Record No. 25-1,p.12] Despite Qiu insisting the applicant was falsely described as qualified, the Board's Memorandum filed in Support of Summary Judgment clearly states that the chosen applicant "because of being enrolled in an Option 6 program ... was also not yet qualified for the position, but was eligible for the issuance of a provisional certificate to teach physics upon being hired for the physics position." [Record No.26,p.12] Neither Chenoweth nor the Board misled the Court.

And no spoliation occurred. "Spoliation is defined as the intentional destruction of evidence that is presumed to be unfavorable to the party responsible for its destruction. "*United States v. Copeland*, 321 F.3d 582, 597 (6th Cir. 2003). This Court has also recognized spoliation where evidence is materially altered. *See First Tech. Cap., Inc. v. JPMorgan Chase Bank, N.A.*, 12-cv-289, 2014 WL 12648548, at *3 (E.D. Ky. Aug.21, 2014) (quoting *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2011)). Qiu does not allege that any documents were destroyed. She merely contends that Chenoweth's redactions constituted "changed evidence." [Record No.37,p.4] But redacting the applicant's enrollment dates did not "alter" the document. If Qiu wished to oppose the redactions, she had ample time to do so. And even if the redaction had risen to the level of alteration, it would not have been material. Qiu failed to

demonstrate that she was a qualified applicant as part of her *prima facie* case. *See White v. Baxter Healthcare Corp.*, 533 F.3d 381, 391 (6th Cir. 2008). Accordingly, the Court was not required to analyze the other applicant's qualifications.

B.

Qiu next alleges that Chenoweth misrepresented the law to disqualify her from the physics position by suggesting she was not qualified under Option 7. This argument highlights Qiu's ongoing misunderstanding of the applicable statute. Despite this Court's detailed Memorandum Opinion and Order [Record No.32], Qiu continues to argue that she was "ready to be professionally certified for the physics position by Option 7 for her physics Praxis score ...." [Record No. 34, pp. 3-4] This argument fails as a matter of law for two reasons. First, the Praxis scores Qiu submitted offer no support of her qualification because they were unverified and expired.2 2"At the EPSB Meeting on July 11, 2022, the Board voted unanimously to allow ten-year recency for admission assessments under 16 KAR 5:020. However, when Qiu applied for the physics teacher position, the five-year recency requirement was in place. *See* Meeting Minutes, Action Item 2022-034, Education Professional Standards Board, Kentucky Department of Education (July 11, 2022)." [Record No.32,p.8,n.5]

[E]ven if Qiu had submitted a certified copy of her Praxis scores demonstrating proficiency in physics, the scores provided had expired for purposes of

teacher certification. Pursuant to 16 KAR 5:020,"A passing score on an assessment established at the time of admission shall be valid for the purpose of applying for admission for five (5) years from the assessment administration date." The test upon which Qiu relies to demonstrate her proficiency in physics was taken May 7, 2013 (a date some seven years before applying for the vacancy here in issue).

[Record No. 32,p.8] Second, even if her Praxis scores had been both verified and unexpired, Option 7 still would not be available to her because she already holds a certification in chemistry. "The Institute Alternative Route to certification is only available for initial certification, which is clearly stated on the EPSB explainer that she herself provided." [Record No.32,p.8]

Qiu's motion for sanctions levies unfounded accusations against Chenoweth and attempts to relitigate issues already resolved. Her motion for sanctions will denied because Qiu fails to raise any legal basis to support her request.

II.

Qiu's second motion seeks to alter the Court's Order granting summary judgment to the Board. [Record No. 32] She argues that the order "falsified facts appallingly," that it "shamed the federal court nastily,"

and that it "lawyered for Board." [Record No. 35, pp.9, 10, 12] From a substantive standpoint, Qiu merely attempts to relitigate prior rulings she finds unfavorable-most of which have no bearing on the outcome of this case. The arguments that she makes are addressed, in detail, in the Court's Memorandum Opinion and Order granting summary judgment for the Board. She does not challenge the Court's decisions on legal grounds, and simply ignores the Court's reasoning and characterizes each ruling against her as "material error" or "injustice." This motion also will be denied because Qiu establishes no basis on which the subject Order should be altered.

Rule 59(e) allows a litigant to file a motion to alter or amend a judgment and gives the district court an opportunity to "rectify its own mistakes in the period immediately following its decision." *White v. N.H. Dep't of Emp. Security*, 455 U.S. 445, 450 (1982). The court may grant a Rule 59(e) motion if there is "(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice."*Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005) (citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" *Oto v.*

Metro. Life Ins. Co., 224 F.3d 601,606 (7th Cir. 2000) (quoing *Sedrak v. Callahan*, 987 F. Supp. 1063, 1069 (N.D. III.1997)). Courts will not address new arguments or evidence that the moving party could have raised before the decision on the merits issued. *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020).

A.

Qiu dedicates a considerable amount of time to arguing that "Board lied to fake the qualification of the selected White/Caucasian for the position" and that the Court "took Board's material lie knowingly." [Record No.35, pp. 1,10] But as the Court has repeatedly stated, the applicant's qualifications were irrelevant to the outcome of this case.

For her case to survive the Board's motion for summary judgment, Qiu was required to establish a prima facie case of disparate treatment. *Tex. Dep't of Comm.Affairs v. Burdine,* 450 U.S. 248, 253 (1981). Doing so required her to demonstrate that: "(1) [s]he is a member of a protected class; (2) [s]he was qualified for [her] job; (3) [s]he suffered an adverse employment decision; and (4) [s]he was replaced by a person outside the protected class or treated differently than similarly situated non-protected employees." *Baxter Healthcare Corp.*, 533 F.3d at 391; [Record No. 32]. Despite her insistence to the contrary, Qiu failed to demonstrate that she was

qualified for the job. As a result, the Court was not required to analyze the other applicant's qualifications and the Board was entitled to summary judgment. This argument does not support Qiu's motion to alter the Court's judgment.

B.

Next, Qiu argues that the Court erred by not considering earlier acts of alleged discrimination. But the order granting summary judgment to the Board explained this in detail. [See Record No. 32, Part I] Qiu ignores the Court's analysis and cites a California Court of Appeals decision interpreting state law to suggest that the Court made "many errors of fact and law purposely that it is injustice." [Record No. 35, p.7] Qiu's bald assertion that the Court erred, absent any legal argument, does not support her motion.

C.

Qiu also contests the Court's denial of her motion to file a sur-reply when the parties were briefing their motions for summary judgment. [Record No. 35, p.12] The Court dedicated Part III of its Memorandum Opinion and Order to addressing her request and laid out the reasons for denying her motion. [Record No. 32] Qiu ignores this reasoning and simply asserts that it was a material error of the Court. Despite her claim, the Board's Reply had not introduced a new issue of law and Qiu was not entitled to file a sur-reply. But

even if the Court had permitted the filing, the issue she wished to address had no bearing on the outcome of this case.

D.

The final substantive argument is Qiu's contention that the Court erred when determining that her Praxis scores were expired for purposes of teacher certification through Option 7.3 3 This ignores the fact that Qiu does not qualify for certification through Option 7, which is for new certification only. [See Record No. 32,p.8]. Rather than challenge the Court's recitation of blackletter law, Qiu makes an argument by analogy. She notes that license renewal as a certified nursing aid requires candidates to provide evidence that they performed nursing related functions for at least eight hours for pay as a nurse aide during the prior twenty-four-month period. She argues that "memory fades with time, and practicing strengths memory that every kind of certificate is valid as long as the holder practices the expertise which was certified." [Record No. 35, p.15] Accordingly, Qiu states that her "memory of physics was still good in 2021 because she taught physics in 2017-2018.... So Qiu's physics Praxis was still valid in 2021 because she taught physics in 2017-2018 like her nursing aid certificate is valid if she practices 8 hours on a paid job every two year." [Record No. 35,p. 15] Qiu's theory on license permanence does not negate the Commonwealth's statutory requirements for teacher certification. For

these reasons, Qiu's motion to alter the Court's judgment will be denied.

III.

Qiu has a history of inappropriately moving for sanctions, attempting to relitigate resolved matters, and unnecessarily prolonging litigation. All litigants, including those proceeding pro se, have a duty to litigate their claims in good faith. The above-described misconduct abuses the judicial process and unfairly burdens one's adversaries by needlessly extending their expenditure of time and money. To prevent further disruption to the Court and the unnecessary burden on her opponents, the Court may impose a prefiling restriction in this case.

"Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *In re McDonald,* 489 U.S. 180, 184 n.8 (1989) (quoting *In re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984)); see also *In re Darwin Gravitt,* No. 86-1617, 1987 WL 36293, at *1 (6th Cir. Feb. 10, 1987) (quoting same). "A court may exercise its inherent power to sanction when a party has 'acted in bad faith, vexatiously, wantonly, or for oppressive reasons,' or when the conduct was 'tantamount to bad faith.'" *United States v. Aleo*, 681 F.3d 290,305 (6th Cir.2012) (quoting *Metz v. Unizan*

Bank, 655 F.3d 485, 489 (6th Cir.2011) (citing *Chambers v. NASCO,* Inc., 501 U.S. 32, 45-46 (1991))). To exercise their inherent authority, federal courts may "'impose carefully tailored restrictions' upon 'abusive litigants.'" *Scott v. Bradford*, No. 13-12781, 2014 WL 6675354, at *3 (E.D. Mich. Nov. 25, 2014) (quoting *Cotner v. Hopkins*, 795 F.2d 900, 902 (10th Cir. 1986)).

A.

While pro se litigants' filings are "held to less stringent standards," their conduct is not. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Put in blunt terms, ordinary civil litigants proceeding *pro se* are not entitled to special treatment. *See McKinnie v. Roadway Express, Inc.,* 341 F.3d 554, 558 (6th Cir. 2003). They have "no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." *Farguson v. MBank Houston, N. A.*, 808 F.2d 358, 359 (5th Cir. 1986). Instead, they must conduct themselves "with the decorum and respect inherent in the concept of courts and judicial proceedings." *Illinois v. Allen,* 397 U.S. 337, 343 (1970). " A *pro se* litigant in essence stands in the place of an attorney." *Bus. Guides, Inc. v. Chromatic Comme'ns Enters., Inc.*, 498 U.S. 533, 558 (1991) (Kennedy, J., dissenting). And while "courts must construe liberally the contents of a *pro se* complaint," *pro se* litigants are not exempt from

the ordinary rules that govern civil practice. *In re Edwards*, 748 F. App'x 695, 700 (6th Cir.2019); *McNeil v. United States,* 508 U.S. 106, 113 (1993); *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir.1989).

B.

In little more than a year, Qiu initiated nine Title VII suits against school districts across the Eastern and Western Districts of Kentucky.4 4 *Qiu v. Bd. of Educ. of Anderson Cnty.*, No. 21-cv-027 (E.D. Ky. filed July 7, 2021), appeal docketed, No. 23-5888 (6th Cir. Oct. 10, 2023); *Qiu v. Bd. of Educ. of Scott Cnty.*, No. 21-cv-197 (E.D. Ky. filed July 15, 2021), appeal docketed, No. 23-5842 (6th Cir. Sept. 19, 2023); *Qiu v. Bd. of Educ. of Hardin Cnty.*, No. 21-cv-482 (W.D. Ky. filed July 26, 2021); *Qiu v. Bd.of Educ.of Bowling Green Indep. Schs.*, No. 22-cv-062 (W.D. Ky. filed May 27, 2022); *Qiu v. Bd. of Educ. of Oldham Cnty. Schs.*, No. 22-cv-284 (W.D. Ky. filed May 27, 2022); *Qiu v. Bd. of Educ. of Nelson Cnty.* Schs., No. 22-cv-334 (W.D. Ky. filed June 27, 2022); *Qiu v. Bd. of Educ. of Oldham Cnty. Schs.*, No. 22-cv-383 (W.D. Ky. filed July 27, 2022); *Qiu v. Bd. of Educ. of Woodford Cnty. Pub. Schs.*, No. 22-cv-196 (E.D. Ky. filed July 29, 2022); *Qiu v. Bd.of Educ. of Jefferson Cnty. Pub. Schs.*, No. 22-cv-529 (W.D. Ky. filed Oct. 5, 2022). While there is no limit to the number of actions that a plaintiff can bring to vindicate rights, there is a duty to litigate those claims in good faith and in accordance with the rules and procedures of the Court in which actions are filed. Qiu has repeatedly engaged in making ad hominem attacks against the opposing party and its counsel, consistently fails to adhere to the Local Rules, and needlessly burdens her adversaries by extending litigation past entry of final

judgment through a series of meritless filings. In another case brought before this Court, *Qiu v. Board of Education of Scott County, Kentucky,* Magistrate Judge Edward B. Atkins recommended that Qiu be permanently barred from filing documents in the case without certification from a magistrate judge that the proposed filing was not frivolous and was not filed with any improper purpose. *See* Order and Recommendation, *Qiu v. Bd. of Educ. of Scott Cnty.,* No. 21-cv-197 (E.D. Ky. Nov.9, 2022), ECF No. 82. The Recommendation highlighted Qiu's "reliance on ad hominem attacks directed at Defendant and its lawyers," and her consistent failure "to cite with particularity the legal foundation for her motions." *Id.* at 10-11. After providing Qiu with an opportunity to object, District Court Judge Gregory Van Tatenhove adopted the Recommendation and imposed a case-specific prefiling requirement. *See* Memorandum Opinion & Order, *Qiu v. Bd. of Educ. of Scott Cnty.,* No. 21-cv-197 (E.D. Ky. Jan. 23, 2023), ECF No. 97. But Qiu's misconduct persists and the undersigned will take a similar approach in this case to protect the judicial process and the good faith litigants appearing here.

1.

Qiu has been warned that, regardless of her status as a pro se litigant, she is "to show appropriate courtesy and respect to opposing counsel," that she "is

not entitled to make unfounded ad hominem attacks on opposing counsel," and that "by acting unethically, frivolously, or vexatiously, 'the Court may impose sanctions as may be necessary and appropriate to deter such conduct.'" Order and Recommendation at 8-9, *Bd. of Educ. of Scott Cnty.*, No. 21-cv-197, ECF No. 82 (first quoting *Gueye v. U.C. Health,* No. 13-cv-673, 2014 WL 4984173, at *5 (S.D. Ohio Oct. 6, 2014); and then quoting *Wesley v. Accessible Home Care,* No. 18-cv-200, 2018 WL 6424691, at*3 (E.D. Ky. Dec. 6, 2018) (citing *Chambers v. NASCO, Inc.,* 501 U.S. 32, 44-45 (1991)). Qiu's *pro se* status does not excuse her attempts to slander the Court by making unfounded accusations of bias or prejudice. *See Mayberry v. Pennsylvania,* 400 U.S. 455, 462 (1971); *Gueye*, 2014 WL 4984173, at *5.

Qiu repeatedly derides the opposing party and its counsel, referring to Assistant Superintendent Garett Wells as a "racist" [e.g, Record No.29, pp.11, 14, 18] and accusing opposing counsel of perjury [e.g., Record No. 34, p.3], hiding evidence [e.g., Record No. 37, p.6], and misleading the Court [e.g., Record No. 37, p.6]. She also accuses the Court of falsifying facts [e.g., Record No.35, pp. 9, 11], misrepresenting the law [e.g., Record No.37, p.7], and lawyering for the Board [e.g., Record No. 35, p.12].

These ad hominem attacks and baseless accusations are merely recycled from other cases she has brought in the Eastern and Western Districts of Kentucky. *See*, e.g., Motion for Sanctions, *Qiu v. Bd. of Educ. of Oldham Cnty. Schs.*, No.22-cv-383 (W.D. Ky. July 19, 2022), ECF No. 18 (accusing opposing counsel of misrepresenting the law); Motion for Sanctions, Qiu v. Bd. of Educ. of Nelson Cnty. Schs., No. 22-cv-334 (W.D. Ky. July 19,2023), ECF No.22 (same); Motion to Strike-Exhibit A, *Qiu v. Bd. of Educ. of Scott Cnty.*, No. 21-cv-197 (E.D. Ky. Oct. 13, 2021), ECF No. 14-1 (notifying opposing counsel that she will move to "sanction, prosecute, disbar" to stop counsel from "criminally operating this case"); Motion for Sanctions, *Qiu v. Bd. of Educ. of Hardin Cnty.*, No. 21-cv-482 (W.D. Ky. Aug. 2, 2023), ECF No. 113 (accusing the defendant and opposing counsel of involving students in a perjury scheme); Motion to Recuse, Qiu v. Bd. of Educ. of Scott Cnty., No. 21-cv-197 (E.D. Ky. Aug. 28, 2023), ECF No. 129 (accusing the presiding judge of having "served defendant and its lawyers as their lawyer" and doing so "with his power"); Motion to Recuse, *Qiu v. Anderson Cnty. High Sch.*, No. 21-cv-027 (E.D. Ky. Sept. 1, 2023), ECF No. 61 (making a similar accusation). Despite multiple warnings and admonishments, Qiu continues to conduct herself in a manner that is inappropriate and abusive to her adversaries and the Court.

2.

Qiu has also been warned that her motions must comply with Local Rule 7.1(a) and Federal Rule of Civil Procedure 7(b)(1)(B)-(C); that is, they must "state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it." *See*, e.g., Order and Recommendation at 8, *Bd. of Educ. of Scott Cnty.*, No. 21-cv-197, ECF No. 82. "[T]he rule that *pro se* filings should be liberally construed does not exempt *pro se* litigants from basic pleading standards." *Johnson v. E. Tawas Hous. Commn'n,* No. 21-1304, 2021 WL 7709965, at *1 (6th Cir. Nov.9,2021). Nor does it require courts to "conjure allegations on a litigant's behalf." *Martin v. Overton,* 391 F.3d 710, 714 (6th Cir. 2004) (quoting *Erwin v. Edwards,* 22 F. App'x 579, 580 (6th Cir. 2001)). But even the most generous reading of Qiu's recent filings [Record Nos. 34, 35] fails to expose a legal or factual basis to support her motions. Instead, she merely repackages old arguments in a new motion with the hope of a better outcome-often while completely ignoring the factual and legal justifications for the Court's earlier rulings. These tactics fall far short of the Court's mandate that parties litigate their claims in good faith.

3.

Qiu's practice of extending litigation well past its natural conclusion with frivolous filings subjects her adversaries to needless expenditures of time and money. It also interferes with the Court's ability to manage its docket and places an undue burden on the tax-supported courts. *Cf. Schafer v. City of Defiance Police Dep't,* 529 F.3d 731, 736 (6th Cir.2008). While her conduct is mirrored in the cases she has brought in the Western District of Kentucky, the Court will focus on the three cases brought in the Eastern District.

The first case Qiu brought before this Court was against the Board of Education of Anderson County. *Qiu v. Bd. of Educ. of Anderson Cnty.*, No. 21-cv-027 (E.D. Ky. filed July 7, 2021). After both parties' motions for summary judgment were fully briefed, Qiu moved for sanctions against opposing counsel. Motion for Sanctions, *Qiu v. Bd. of Educ. of Anderson Cnty.*, No. 21-cv-027 (E.D. Ky. Aug.11, 2023), ECF No. 53. The Court found that she offered "no grounds to sanction" opposing counsel and denied her motion. Memorandum Opinion & Order at 10, *Qiu v. Bd. of Educ. of Anderson Cnty.*, No. 21-cv-027 (E.D. Ky. Aug. 11, 2023), ECF No. 59. Judgment was entered in favor of the defendant on August 28, 2023. Judgment, *Qiu v. Bd. of Educ. of Anderson Cnty.*, No. 21-cv-027 (E.D. Ky. Aug. 28, 2023), ECF No. 60. Qiu then filed a motion seeking the judge's recusal and a motion to

alter the Court's judgment, pursuant to Rule 59(e). Both motions were denied as meritless. See Order at 2, *Qiu v. Bd. of Educ.of Anderson Cnty.,* No.21-cv-027 (E.D. Ky. Sept.12, 2023), ECF No.63; Memorandum Opinion & Order at 1, Qiu v. Bd. of Educ. of Anderson Cnty., No. 21-cv-027 (E.D. Ky. Sept.19, 2023), ECF No. 64. Qiu has appealed to the United States Court of Appeals for the Sixth Circuit. Notice of Appeal, Qiu v. Bd. of Educ. of Anderson Cnty., No. 21-cv-027 (E.D. Ky. Oct.10, 2023), ECF No.65, appeal docketed, No. 23-5888 (6th Cir. Oct. 10, 2023).

The second case Qiu brought before this Court was against the Board of Education of Scott County. *Qiu v. Bd. of Educ. of Scott Cnty.,* No. 21-cv-197 (E.D. Ky. filed July 15, 2021). Opposing counsel moved for a status conference on February 7, 2022, stating that "[i]n the past five months, Qiu has filed thirteen (13) separate pleadings which have required [Scott County Schools] to expend time, money, and resources to respond." Motion for Status Conference at 2, *Qiu v. Bd. of Educ. of Scott Cnty.,* No. 21-cv-197 (E.D. Ky. Feb. 7, 2022), ECF No. 29. The Court imposed a case-specific prefiling injunction against Qiu after finding that she had a "history of filing frivolous motions." Memorandum Opinion & Order at 4, *Qiu v. Bd. of Educ. of Scott Cnty.,* No. 21-cv-197 (E.D. Ky. Jan. 23, 2023), ECF No. 97. Judgment was entered in favor of the defendant on May 26, 2023. Judgment,

Qiu v. Bd. of Educ. of Scott Cnty., No. 21-cv-197 (E.D. Ky. May 26, 2023), ECF No. 112. Since the Court entered Judgment nearly six months ago, Qiu has moved for sanctions against opposing counsel, moved to alter the Court's Judgment, filed a motion to have the presiding judge recuse, and has entered a number of miscellaneous objections. All of these requests have been denied. Qiu has appealed this case to the Sixth Circuit as well. Notice of Appeal, *Qiu v. Bd. of Educ. of Scott Cnty.*, No. 21-cv-197 (E.D. Ky. Sept. 18, 2023), appeal docketed, No. 23-5842 (6th Cir. Sept. 19, 2023).

Qiu filed the instant case on July 29, 2022. [Record No.1] The parties had fully briefed their respective motions for summary judgment by early September 2023. The undersigned entered Judgment in favor of the Board on September 27, 2023. [Record No.33] Shortly thereafter, and consistent with her well-established pattern, Qiu moved for sanctions against opposing counsel and sought to have the Court alter its Memorandum Opinion and Order granting summary judgment to the Board. [Record Nos. 34, 35] As discussed above, these motions are frivolous and have placed an unnecessary burden of time and expense on the Board and opposing counsel.

C.

"Filing restrictions are 'the proper method for handling the complaints of prolific litigators,' and a district court may impose one at its discretion." *United States v. Petlechkov,* 72 F.4th 699, 710 (6th Cir. 2023) (quoting Filipas v. Lemons, 835 F.2d 1145, 1146 (6th Cir.1987)). Although a plaintiff may not be "absolutely foreclosed from initiating an action in a court of the United States," district courts may "require one who has abused the legal process to make a showing that a tendered lawsuit is not frivolous or vexatious before permitting it to be filed." *Ortman v. Thomas,* 99 F.3d 807,811 (6th Cir. 1996); *see also Feathers v.Chevron U.S.A., Inc.,* 141 F.3d 264, 269 (6th Cir. 1998) ("There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation."). If a litigant "is likely to continue to abuse the judicial process and harass other parties," then a pre-filing injunction is warranted. *Scott,* 2014 WL 6675354, at *4 (quotations omitted). When doing so, the court must articulate sufficient rationale, particularly when the defendant is proceeding *pro se. Petlechkov,* 72 F.4th at 710. Courts should also ensure that filing restrictions are narrowly tailored to address the abusive filing practices. *See United States v.Westine,* No. 22-5790, 2023 WL 7511686, at *2 (6th Cir. Nov. 9, 2023).

Here, the undersigned finds that Qiu has a history of abusing the judicial process by filing frivolous motions that harass other parties, needlessly extend litigation, and interfere with the Court's ability to administer justice in an expedient and orderly fashion. This Court has afforded her significant latitude due to her status as a *pro se* litigant. But despite the Court's repeated warnings, opportunities to be heard, and guiding instruction, she continues to disregard these admonitions at the expense of other litigants. Her conduct is tantamount to bad faith. *See BDT Products, Inc. v. Lexmark Int'l, Inc.*, 602 F.3d 742, 752 (6th Cir.2010). It "is not appropriate and should not be tolerated." *Wesley*, 2018 WL 6424691, at *3.

Pursuant to this Court's inherent power and consistent with the Sixth Circuit's holding in *Ortman*, the undersigned will impose a prefiling restriction requiring Qiu to show a legal basis for new motions before she can file them in this case. *See Chambers*, 501 U.S. at 46. This requirement is not meant to discourage Qiu from filing future motions where she can demonstrate a good faith legal basis. The undersigned finds this requirement the least restrictive means of promoting the interest of judicial economy and protecting other parties before the Court. At this time, the undersigned does not believe that a District-wide injunction or monetary penalties

are necessary. However, the Court does not foreclose these options should Qiu's misconduct persist.

IV.

Based on the foregoing analysis and discussion, it is hereby

ORDERED as follows:

1. Plaintiff Qiu's motion for sanctions against opposing counsel [Record No.34] is **DENIED.**
2. Plaintiff Qiu's motion to alter the Judgment in this case [Record No. 35] is **DENIED.**
3. Within twenty-one days, Plaintiff Qiu is directed to **SHOW CAUSE** why the Court should not impose the filing restriction described above. She is directed tofile a written response articulating the factually and legally sufficient grounds for any opposition.
4. With the exception of responding to paragraph 3 of this Order, Plaintiff Qiu is temporarily **ENJOINED** from filing any documents or motions in this case for the lesser of twenty-one (21) days or entry of the Court's order regarding a prefiling restriction.

Dated: November 21, 2023.

Danny C. Reeves s/
Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky