

No. _____

**In the
Supreme Court of the United States**

SHELLY G. HUDSON,

Petitioner,

v.

CHARLESTON COUNTY SCHOOL DISTRICT,
DANA ROGERS, AND JENNIFER COKER,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in a hostile-work-environment case involving facially racist and sexist harassment by students, an employee satisfies Title VII's notice requirement by repeatedly reporting the conduct to school officials who already know of it, or whether, as the courts below held, she must also use prescribed reporting channels, expressly state that she and others were subjectively offended, and tolerate a heightened level of harassment because she teaches at an alternative school.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Shelly G. Hudson

Respondents and Defendants-Appellees below

- Charleston County School District
- Dana Rogers
- Jennifer Coker

CORPORATE DISCLOSURE STATEMENT

There is no corporate petitioner or publicly traded company on this petition.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit
No. 25-2088

Shelly G. Hudson, *Plaintiff-Appellant* v.
Charleston County School Dist., et al., *Defendants-Appellees*

Opinion: June 9, 2026

Rehearing Denial: July 8, 2026

U.S. District Court, D. South Carolina

Civil Action No. 2:22-cv-3423-DCN

Shelly G. Hudson, *Plaintiff* v. Charleston County
School Dist., et al., *Defendants*

Summary Judgment: July 17, 2025

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE STATEMENT	ii
LIST OF PROCEEDINGS.....	iii
TABLE OF AUTHORITIES	vi
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
INTRODUCTION	2
STATEMENT OF THE CASE.....	11
A. Factual Background.....	11
B. Procedural History	16
REASONS FOR GRANTING THE PETITION.....	17
A. The Fourth Circuit’s Decision Imposes an Improperly Heightened Burden on Plaintiffs in Hostile Work environment Cases Involving Facially Discriminatory Harassment	17
B. The Opinion Is Out of Step with Title VII’s Remedial Purposes and National Consensus.....	23
C. THIS ISSUE IS RECURRING AND IMPORTANT.....	25
CONCLUSION.....	26

TABLE OF CONTENTS (Cont.)

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion, U.S. Court of Appeals for the Fourth Circuit (June 9, 2026)	1a
Summary Judgment in a Civil Action, U.S. District Court for the District of South Carolina (July 17, 2025)	8a
Order Adopting Report and Recommendation, U.S. District Court for the District of South Carolina (July 14, 2025)	10a
Magistrate Judge's Report and Recommendation, U.S. District Court for the District of South Carolina (July 22, 2024)	28a

REHEARING ORDERS

Order Denying Petition for Rehearing En Banc, U.S. Court of Appeals for the Fourth Circuit (July 8, 2026)	55a
Order Denying Motion to Amend Judgment, U.S. District Court for the District of South Carolina (August 14, 2025)	57a

OTHER DOCUMENTS

Complaint (October 4, 2022)	59a
--------------------------------------	-----

TABLE OF AUTHORITIES

	Page
CASES	
<i>Ames v. Ohio Dep’t of Youth Servs.</i> , 605 U.S. 303 (2025)	19
<i>Bowen v. Missouri Dep’t of Soc. Servs.</i> , 311 F.3d 878 (8th Cir. 2002)	23
<i>Burlington Indus., Inc. v. Ellerth</i> , 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998)	21
<i>Cerros v. Steel Techs., Inc.</i> , 398 F.3d 944 (7th Cir. 2005)	24
<i>Chapman v. Oakland Living Ctr., Inc.</i> , 48 F.4th 222 (4th Cir. 2022)	20
<i>Davis v. Monroe County Bd. of Educ.</i> , 526 U.S. 629 (1999)	18
<i>EEOC v. Sunbelt Rentals, Inc.</i> , 521 F.3d 306 (4th Cir. 2008)	18, 23
<i>Evans v. International Paper Co.</i> , 936 F.3d 183 (4th Cir. 2019)	17
<i>Forrest v. Brinker Int’l Payroll Co., LP</i> , 511 F.3d 225 (1st Cir. 2007)	24
<i>Freeman v. Dal-Tile Corp.</i> , 750 F.3d 413 (4th Cir. 2014)	18, 21
<i>Howard v. Winter</i> , 446 F.3d 559 (4th Cir. 2006)	18
<i>Mosby-Grant v. City of Hagerstown</i> , 630 F.3d 326 (4th Cir. 2010)	23
<i>Ocheltree v. Scollon Prods., Inc.</i> , 335 F.3d 325 (4th Cir. 2003)	18

TABLE OF AUTHORITIES (Cont.)

	Page
<i>Webster v. Chesterfield Cty. Sch. Bd.</i> , 38 F.4th 404 (4th Cir. 2022).....	20, 21, 22

STATUTES

28 U.S.C. § 1254(1)	1
42 U.S.C. § 1981.....	2
42 U.S.C. § 1983.....	2
42 U.S.C. § 2000d.....	2
42 U.S.C. § 2000e	2

JUDICIAL RULES

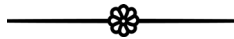
Fed. R. Civ. P. 59(e)	16
-----------------------------	----



OPINIONS BELOW

On June 9, 2026, the United States Court of Appeals for the Fourth Circuit entered its Opinion affirming the District Court’s grant of summary judgment in favor of Defendants and against Plaintiff. (App.1a).

By order dated July 17, 2025, the District Court granted Appellees’ Motion for Summary Judgment (and denied Appellant’s Motion for Partial Summary Judgment), dismissing Appellant’s claims in their entirety. (App.8a, underlying reasoning at App.10a). The District Court denied Appellant’s Motion to Alter or Amend on August 14, 2025. (App.57a)



JURISDICTION

The Fourth Circuit entered judgment on June 9, 2026 (App.1a). A timely filed Petition for Rehearing En Banc was denied on July 8, 2026. (App.55a). This Court has jurisdiction under 28 U.S.C. § 1254(1) (“Cases in the courts of appeals may be reviewed by the Supreme Court by . . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.”).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Plaintiff asserted claims for hostile work environment and violations of her constitutional rights pursuant to 42 U.S.C. §§ 1981 and 1983, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 42 U.S.C. § 2000d.



INTRODUCTION

This petition seeks review of the Fourth Circuit’s unpublished opinion filed June 9, 2026 (the “Opinion”), affirming the entry of summary judgment against Appellant and in favor of Appellees Charleston County School District (“District”), Dana Rodgers, and Jennifer Coker (all collectively “Defendants”). From the outset of her employment, Plaintiff Shelly G. Hudson (“Plaintiff”) was subjected to relentless racial and sexual harassment by students. Students called her slurs such as “fucking white bitch” and “cracker,” and subjected her to sexualized taunts about her body and appearance, including “saggy boobs” and “knobby knees.” She was repeatedly called “bitch,” “white bitch,” and other gendered and racial epithets. Students also engaged in sexually explicit talk and behavior in her presence, including graphic references to sexual acts and derogatory comments about her and other female staff members’ bodies.

The Opinion conflicts with settled law and presents an issue of exceptional importance because it transforms

Title VII's notice requirement into an unprecedented procedural barrier. Existing law asks whether the employer knew or should have known of the harassment—not whether the employee used a prescribed form, invoked particular words, or separately declared that facially discriminatory abuse was offensive. The Opinion nevertheless imposes each of those burdens. It further subjects teachers in alternative-school settings to a heightened notice standard based on assumptions about student behavior and administrators' tolerance of abuse. Nothing in Title VII or this Court's precedents supports those departures from the ordinary negligence standard.

The record makes the consequences of that error concrete. Plaintiff repeatedly reported discriminatory conduct through disciplinary referrals directed to the officials responsible for student discipline. Those referrals described conduct that would alert any reasonable employer to racial and sexual harassment, and several expressly identified “sexual harassment” or “intimidation.” Far from lacking notice, District officials knew that this abuse was occurring; Defendant Coker admitted in her deposition that such harassment occurred in District schools.

The Defendants were well-aware of the ongoing problem with racial and sexual harassment at DJA. Defendant Jennifer Coker, Charleston County School District's Director of Alternative Programs, who were in charge of discipline testified that it was a “frequent” event for students to call white female teachers, “white motherfucking birches” at DJA and other secondary schools. (*See* JA 121:9-20; JA637:8-16). Defendant Coker admitted under oath that she knew about the racial and sexual abuse of teachers and that the source of

her knowledge were disciplinary referrals, the same tools Plaintiff used to inform the school about her abuse (and that the District Court found to be insufficient to notify Defendants of the harassment). Despite having this knowledge, Defendant Coker testified that being repeatedly called a “fucking white bitch” was not degrading, sex-based, offensive, or even unwelcome:

Q. Do you think it’s—a reasonable woman would think it’s unwelcome or degrading to be called a fucking white bitch if they’re white and female?

MR. MATTHEWS: Object to the form.

THE WITNESS: Again, I feel like I’m a reasonable person. It does not bother me . . .

Q. Okay. And just to get it, your under oath, you’re the woman in charge of discipline for Charleston County School students, correct?

A. Correct

(*See* JA638:4-639:6; *see also* JA651:4-JA652:9). This prevailing attitude allowed the racial and sexual harassment at DJA to worsen and continue.

Defendant Coker testified that she was aware of frequent discriminatory abuse:

Q. I’m just asking in general. Do you think it’s frequently that—it’s a frequent occurrence at every Charleston County school to be called a bitch, mother fucking white bitch?

A. I think that happens at most of our secondary schools, unfortunately.

Q. On a frequent basis?

A. From the referrals that come in, it's quite frequent.

(See JA637:8-16). Upon learning that female teachers were being called “fucking white bitches,” Defendant Coker’s response was that this was not sexual offensive conduct:

Q Is it degrading for a woman to be called a bitch?

A Not in my—not for me.

Q Is it unwelcome for a woman to be called—for a white woman to be called a fucking white bitch?

MR. MATTHEWS: Object to the form.

THE WITNESS: I can’t answer for other women. It does not bother me

Q Do you think it’s—a reasonable woman would think it’s unwelcome or degrading to be called a fucking white bitch if they’re white and female?

MR. MATTHEWS: Object to the form.

THE WITNESS: Again, I feel like I’m a reasonable person, It does not bother me.

BY MR. KOBROVSKY:

Q Okay. And just to get it, you’re under oath, you’re a woman in charge of discipline for Charleston County School Students, correct?

A Correct.

(See JA638:4-639:6). She further reiterated her belief that being called a “motherfucking white bitch” is somehow not a sex-based slur:

Q Being called a motherfucking white bitch, is that a sexual slur to you?

A No, sir

Q That wouldn't be a sexual slur?

A It's profanity to me.

Q It's not sexual in nature?

A Not to me.

Q Okay. And that would be in your official capacity as—is it vulgar . . . to be called a motherfucking white bitch?

MR. MATTHEWS: Object to the form.

THE WITNESS: You could consider it vulgar. Certain people could consider that vulgar, yes.

MR. KOBROVSKY:

Q But not everybody?

A I can't speak for everybody.

Q Do you consider it vulgar? . . .

A Again, I would not be offended by that.

Q Would you feel degraded by that?

A No, I would not.

Q Would you feel it's unwelcome to you?

A it would not bother me. It would not.

Q So it would not be unwelcoming?

A It would not be. It wouldn't matter to me either way.

(See JA651:4-JA652:9).

Nevertheless, the Defendant Coker testified that this language was a proper subject for referrals:

Q Well, how do you know that they—when I asked you earlier, you said that the term motherfucking white bitch was frequently called throughout the schools, if I understand your answer, because you got referrals on it. do you look at the referrals?

A I spot check referrals, yes.

Q Did you spot check referrals at the Daniel Jenkins Academy in 2018-19?

A I'm sure that I looked at the referrals.

Q And I'll ask you this. You would know what the student code of conduct was for 2018 or '19?

A Correct.

Q Is the use of racial slurs a violation of that student conduct during the 2018-19 school year by students against other students or employees?

A Yes, it is.

(See JA645:10-25). The Defendant Coker testified that she did not consider this type of language to be racially or sexually offensive.

Q If you encountered it, would you consider this type of language to be racially or sexually offensive:

A Appropriate? Not for a work environment.

Q Would you consider it offensive?

A Again, not to me.

Q Or degrading?

A Again, not to me personally.

(See JA653:14-21). Defendant Coker also testified to her belief that the term “cracker” was somehow not racial:

Q Okay. On March 11, , you identified on Bates stamp 1433 that happened in her classroom, and it reads: A student told me to shut the fuck up, then student called me a cracker. And I’m asking you was the student using a racial slur on Ms. Hudson at that time?

A. If she considered it a racial slur, she put it in the referral, my guess would be, yes, she considered it a racial slur.

Q Do you consider it a racial slur?

A Not if it was called to me, I would not be offended by it nor worried about it.

Q Is a racial slur depending on—in other words, the sue of racial slurs are only offensive if the person is offended?

A You can only be offended if you’re offended,

(See JA199:10-25).

Coker continually testified that she – one of the defendants responsible for safety at this school – did not find facially discriminatory language to, in fact, be discriminatory:

Q So if a student calls a teacher the N word, that's – if a student calls a black teacher the N word, which we recognized as a racial slur to you as the chairman or the head of the student discipline, whether that black employee should be offended or not depends on that individual?

A Correct, I can't tell someone to be offended by something. Do I think it's inappropriate, absolutely.

Q All right. And how about when the student said, fuck you, bitch, is that meant as a sexual slur?

A No.

Q When he said, fuck you, bitch, what was the bitch referring to?

A I'm assuming Ms. Hudson.

Q So when the student said—called me a cracker and then said, fuck you, bitch, he was using a racial and sexual slur: is that fair to say?

A I don't agree with that Sexual slur I do not agree with.

Q And racial slur?

A I did say if she felt that way, and she must have because she put it in there, then it would be considered a racial slur to her.

(See JA200-01)

Consistent with the dismissive way Defendant Coker viewed harassment, the School's Principal, Defendant Rodgers, did not take prompt or effective

action with regard to important disciplinary issues. Defendant Rodgers admitted in her own evaluations that “I infrequently deal with student misconduct in a prompt and effective manner.” (*See* JA399 (emphasis added)). she “did not consistently enforce standards for appropriate student behavior according to local, State and Federal regulations.” (*See id.*).

The decisions below erect two additional barriers that warrant this Court’s review. First, they invoke a case involving a profoundly disabled eight-year-old to suggest that Plaintiff was required to tolerate racial and sexual harassment—recast as “poor behavior”—from high school students, although the record contains no evidence that those students had comparable disabilities or lacked the capacity to understand their conduct. That analogy substitutes an unsupported stereotype for record evidence and effectively makes recurring harassment a condition of Plaintiff’s employment. Second, the decisions treat administrators’ asserted lack of offense as a reason to discount notice, even though Title VII protects the employee subjected to discrimination and asks what the employer knew. Whatever the school setting, Plaintiff repeatedly gave Defendants notice of the harassment she endured.

The decisions below also rest on the unsupported premise that Plaintiff’s claims fail because “many” teachers did not find the harassment offensive. No authority permits an employer’s Title VII liability to turn on whether unidentified coworkers allegedly tolerated facially discriminatory abuse. And the record contains no evidence that other teachers were not offended; at most, only the named Defendants expressed that view. If allowed to stand, the rule below would permit an employer to defeat notice merely through

its own agents' testimony that they were not offended. That rule is incompatible with Title VII's objective protections and invites employers to normalize discrimination rather than remedy it.

This case presents a recurring question of exceptional importance: whether courts may impose special notice burdens on some Title VII plaintiffs that the statute imposes on none. The question presented is whether the Fourth Circuit and District Court required more than the governing negligence standard by demanding proof that Plaintiff used particular reporting channels and expressly communicated subjective offense, despite undisputed evidence that Defendants received repeated reports of facially racist and sexist harassment.



STATEMENT OF THE CASE

A. Factual Background

This lawsuit concerns the sexual and racial harassment Plaintiff endured while teaching at Daniel Jenkins Academy (“DJA”), an alternative high school in the District. Plaintiff, a 54-year-old white female math teacher, taught at DJA from August 2018 until May 16, 2019, when she left because of the hostile work environment. Defendant Dana Hancock Rodgers was DJA’s principal and testified that her assistant principals were responsible for handling student discipline under her supervision. Defendant Rodgers’ supervisor was Defendant Jennifer Coker, Defendant District’s Director of Alternative Programs, who oversaw discipline for District.

DJA was an alternative high school that was assigned students age 13-21 with “more egregious disciplinary offenses.” Plaintiff had taught in alternative schools for 13-14 years. She testified that discipline and consequences are particularly important in alternative schools. Defendant Rodgers testified that DJA’s rules for conduct regarding harassment were the same as all District schools.

There is no dispute that Plaintiff was racially and sexually harassed by students at DJA. Students constantly called her slurs like “fucking white bitch.” Plaintiff testified that, although this degraded her sex (equating her to a female dog), Defendant Rodgers did not effectively address it. Plaintiff was also taunted with the racial slur “cracker.” She was abused with sexual taunts about her body, including her “saggy boobs” and “knobby knees.” She was subjected to sexual talk and behavior. Plaintiff was never informed that her job required her to accept such harassment.

Under Defendant District’s Progressive Discipline Plan (PDP), Level 1 offenses were the least severe (cutting class, etc.), while Level 2 offenses were more severe (general harassment). Level 3 comprised the most severe offenses, including intimidation and sexual harassment (“Any unwelcome sexual advances, requests for sexual favors and other inappropriate verbal, written, electronic or physical conduct of a sexual nature that creates an intimidating, hostile or offensive environment”). The consequences for a first Level 3 offense include at least five days of out-of-school suspension, with the possibility of law-enforcement involvement or an expulsion referral. Plaintiff personally made at least 67 written disciplinary referrals at DJA, several of which were expressly coded as Level 3

“sexual harassment” or “intimidation”; others made additional referrals at her direction, bringing the total to more than 100.

Because Defendants did not adequately address her referrals, the harassment intensified. Defendant District did not just fail to handle Plaintiff’s referrals; it instructed her to *reduce* the severity of her reports to minimize the seriousness of the students’ conduct. Plaintiff testified that this was done to avoid punishing or expelling students who were on their last chance due to their behavior:

[T]hese kids are there in lieu of expulsion. But if they continue to have these behaviors at level twos and threes or they’re not academically — they’re supposed to be making good grades, they’re supposed to have good attendance, and they’re supposed to be getting better, but if they’re getting level twos and threes, they’re supposed to be up in front of the board again for a true expulsion or home based instruction, if they have an IEP. That never happened, not once. It was just tolerated.

Plaintiff testified that this was “surprising, shocking” and was a message to “lessen the severity of [her] referrals.” She had not previously been told not to write referrals or to minimize the severity of referrals.

Defendants did not promptly and effectively address Plaintiff’s referrals, including those describing sexual and racial harassment. To the contrary, Defendants tolerated sexually and racially hostile behavior directed *toward administration*. Defendant Rodgers tolerated students calling her “bitch,” “white bitch,” and other names and cursing at her, which emboldened

students to intensify harassment toward teachers, including Plaintiff. Defendant Rodgers' tolerance of harassment "set[] the climate for those kids to abuse the teachers at a higher level because we're with them all day long." Students "believe[d] they could treat the teachers even worse and they would," placing teachers "in a very, very unsafe, humiliating, hostile situation." This is precisely what happened to Plaintiff. Defendants let students know that they could harass teachers, since the Principal allowed them to harass her. As a result, the students ran DJA.

The situation came to a head on May 16, 2019, when Plaintiff twice notified Defendants of abusive conduct by students.

- Plaintiff reported: "I was redirecting another female student — asking her to remove herself from the floor laying next to a male student — using REAL matrix language — KS started telling me to get the fuck away, and mind my own business, then said 'Girl, you wear the same dress every fucking day, you fucking nasty'; 'Go back to your ugly ass chair, bye, fucking ugly ass grandmama knees.' 'I didn't ask mother fucker, what are you gonna do, write me up, get me suspended?' 'Shut the fuck up, Just shut the fuck up.' She was interfering with my conversation with another female — KS was disrespectful and intimidating"
- Plaintiff reported that a student who refused to get off of Facebook said to her: "shut the fuck up bitch – you and your ugly ass dress" and "you don't fuckin tell me what the fuck to do bitch."

As a result, Plaintiff suffered a “whiteout” that “turned into a panic attack.” That was Plaintiff’s last day teaching at DJA. She recounted her abuse to a medical provider:

The patient states that she was excited for the new opportunity and a change in scenery, however within the first week of school at her new position she quickly realized that it was not as advertised. She has had continuous problems with a variety of students who berate her in class, cuss at her, and put her down. She laments that the school is unsupporting when it comes to disciplinary action, so the students continue to behave poorly with seemingly little to no consequences. The patient began to dread going to work and has suffered emotional and physical trauma in her position. On May 16th the patient had to write additional students up for particularly nasty profanity and disrespect. She states that it pushed her to her breaking point

In the District Court, Defendants argued that they lacked knowledge of the harassment because some teachers purportedly were not offended by constant racial and sexual abuse. The record contains no evidence, however, that other teachers experienced the same harassment and were not offended. The only supporting testimony came from Defendants Coker and Rodgers, who said that *they* were not offended. That self-assessment does not negate the notice supplied by Plaintiff’s reports, nor does it establish how other teachers understood the conduct.

B. Procedural History

On March 5, 2024, Plaintiff filed a Motion for Partial Summary Judgment, and Defendants filed a Motion for Summary Judgment. On July 22, 2024, Magistrate Judge Mary Gordon Baker entered a Report and Recommendation, recommending that the District Court grant Defendants' Motion for Summary Judgment and deny Plaintiff's Motion for Partial Summary Judgment. The Magistrate Judge concluded "Plaintiff's claims fail because there is no basis on which to impute liability to Defendants." Specifically, she wrote:

Here, the record conclusively establishes that Plaintiff never filed a formal or informal harassment complaint and never told Defendant Rodgers (or any other administrator) that she felt her students were harassing her because of her sex and race.

On July 17, 2025, the Court entered Summary Judgment against Plaintiff.

On August 6, 2025, Plaintiff filed her Motion to Alter or Amend Pursuant to Federal Rule of Civil Procedure 59(e) and Incorporated Memorandum in Support.

On August 14, 2025, the District Judge denied Plaintiff's motion under Rule 59(e). On September 5, 2025, Plaintiff timely appealed. On June 9, 2026, the Fourth Circuit issued its Opinion affirming the entry of summary judgment against Plaintiff and in favor of Defendants, holding that: (a) Plaintiff's claims failed because she did not use certain established avenues to report harassment to her employer; and (b) it would not consider Plaintiff's detailed Declaration. On July

8, 2026, the Fourth Circuit denied Plaintiff's petition for Rehearing En Banc.



REASONS FOR GRANTING THE PETITION

A. The Fourth Circuit's Decision Imposes an Improperly Heightened Burden on Plaintiffs in Hostile Work Environment Cases Involving Facially Discriminatory Harassment

To succeed on her claim, “[P]laintiff must demonstrate: (1) she experienced unwelcome harassment; (2) the harassment was based on her gender or race; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer.” *See Evans v. International Paper Co.*, 936 F.3d 183, 192 (4th Cir.). The District Judge correctly stated that “[t]he parties neither dispute that Hudson experienced unwelcome harassment nor do they object to the magistrate judge’s finding that Hudson has demonstrated the first, second, and third elements of her claim.” Consequently, the grant of summary judgment rests *exclusively on* the final factor: imputation of liability to the employer. If a genuine issue of material fact existed as to that element, the District Court plainly erred in granting summary judgment.

Under the fourth element, a court may impose liability on an employer for a non-employee’s harassment if “the employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end the harassment.”

See Freeman v. Dal-Tile Corp., 750 F.3d 413, 416, 422-23 (4th Cir. 2014). Under this “negligence standard,” an employer may not avoid liability by “adopting a ‘see no evil, hear no evil’ strategy.” *Id.* (quoting *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 334 (4th Cir. 2003)).

This Court has explained that when student misconduct occurs during school hours and on school grounds, the school retains substantial control over the context and the harasser. *See Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 645 (1999). Courts have held that knowledge of harassment can be imputed if a reasonable employer would have known about it. *See EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 319 (4th Cir. 2008). However, the law is not self-enforcing; employees must make a concerted effort to inform the employer of the problem. *Howard v. Winter*, 446 F.3d 559, 567 (4th Cir. 2006). “Just as an employer may not adopt a ‘see no evil, hear no evil’ sexual harassment policy, an employee may not impute liability on an employer under a theory that the employer must exercise an all-seeing omnipresence over the workplace.” *Howard v. Winter*, 446 F.3d 559, 567 (4th Cir. 2006). Once Defendants had notice of a hostile environment, they were obligated to “respond with remedial action reasonably calculated to end the harassment.” *See EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 319 (4th Cir. 2008).

The governing rule is straightforward: liability may attach when an employer knew or should have known of discriminatory harassment and failed to respond appropriately. That rule does not prescribe a form, channel, or verbal formula for notice. Yet the courts below required Plaintiff to prove not only that she repeatedly reported facially racist and sexist slurs,

but also that she expressly told administrators that she—and apparently other teachers—felt offended. By converting actual reports of discriminatory abuse into legally insufficient notice, the decision below creates a novel subjective-offense requirement that conflicts with Title VII’s negligence standard and the approach of other courts of appeals.

The consequences extend far beyond this case. The Opinion permits employers to disregard reports of facially discriminatory conduct unless victims use preferred channels and separately articulate their subjective reaction. That burden is especially improper here because Plaintiff is a member of a majority racial group, and this Court recently confirmed that Title VII does not impose heightened requirements on majority-group plaintiffs. *See Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 313 (2025) (“We conclude that Title VII does not impose such a heightened standard on majority-group plaintiffs.”). The Opinion nevertheless subjects Plaintiff’s claim to a more demanding rule—one that turns notice on formalities rather than on what the employer actually knew or should have known.

No other Opinion from any Circuit, including the Fourth Circuit imposes this additional burden on minority Plaintiffs in Title VII cases. There are no Opinions in any Circuit that found that the use of racial epithets and sexual slurs are not inherently offensive, and only become offensive if the Plaintiff says that they are offensive.

The decision’s central premise has no support in Fourth Circuit precedent. It asks whether Plaintiff told the District that racial and sexual slurs were offensive, although this Court has long treated racial epithets as facially discriminatory workplace conduct.

See Chapman v. Oakland Living Ctr., Inc., 48 F.4th 222 (4th Cir. 2022) (finding that three uses of a racial slur by a supervisor’s six-year-old child could support a hostile work environment claim). Plaintiff reported slurs such as “bitch,” “motherfucking white bitch,” and “cracker,” as well as comments about her appearance and “saggy boobs.” The Opinion recasts that abuse as “poor behavior,” but its label cannot erase the conduct’s explicit racial and sexual character. Title VII required Plaintiff to give Defendants notice of the harassment, not to explain why facially discriminatory slurs were offensive. Her repeated reports did more than enough to create a genuine issue of material fact.

In support of its holding, the Fourth Circuit relies on (and Defendants have repeatedly cited) *Webster v. Chesterfield Cty. Sch. Bd.*, 38 F.4th 404 (4th Cir. 2022). In *Webster*, a special education teacher alleged that she was sexually harassed by S.M., an eight-year-old boy with Down syndrome and ADHD. The school board presented expert evidence that S.M. “was incapable of distinguishing between sexes and that a reasonable instructional assistant would not view S.M.’s conduct as sexual harassment.” *See id.*, 38 F.4th at 409. The district court granted summary judgment. The Fourth Circuit affirmed, finding that the teacher could not show abuse based on sex, since she did “not contest that S.M. could not distinguish between sexes and agrees that he could not form sexual intent.” *See id.*, 38 F.4th at 410. The Fourth Circuit also wrote in *dicta* that the abuse by the *eight-year-old* could not be imputed to the school board, stating in part:

Like the district court, we too recognize the challenges that *special education* teachers like Webster may face when fulfilling their

professional duties. See *Webster*, 534 F. Supp. 3d at 540, 551. As previously stated, the standard question when determining employer liability for third parties is whether the “employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end the harassment.” *Freeman v. Dal-Tile Corp.*, 750 F.3d 413, 423 (4th Cir. 2014) (internal quotation marks omitted). Unlike in many Title VII actions where the employer’s options to remedy a hostile work environment include firing an employee for sexual harassment, the School Board has a more limited set of remedies available given that they must balance maintaining a nonhostile work environment with ensuring that children have access to public education. See *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998) (describing available tangible employment actions as ones that “constitute[] a significant change in employment status” and include “hiring, firing, failing to promote, [or] reassignment”). This case exemplifies the difficulty of addressing a situation like Webster’s, because while separating Webster and S.M. stopped him from touching her, S.M. was still touching other students. J.A. 64. But if S.M. was behaving as an eight-year-old with Down’s Syndrome and ADHD would, then the school must maintain the nonhostile work environment while still respecting S.M.’s right to obtain an education—a right

held by *all* children. For this reason, appropriate measures may vary.

See Webster, 38 F.4th at 416 (emphasis added). As to the notice requirement, the *Webster* case said only:

It is important to note that these elements cannot be evaluated in complete isolation from each other. Our discussion concerning the severe or pervasive element especially impacts our analysis here, because our finding that S.M.'s conduct was not objectively severe or pervasive helps explain why the School Board may not have taken prior action and why the School Board may not have been on notice at all.

See id., 38 F.4th at 415. The Fourth Circuit in *Webster* did not impose a heavier burden on the Plaintiff because of the nature of her workplace.

Webster underscores why review is warranted rather than why summary judgment was proper. There, expert testimony addressed a single child with severe disabilities who could not distinguish between the sexes, and the school served children with severe disabilities. Here, no comparable evidence shows that DJA is a special-education school, that the students who harassed Plaintiff could not understand distinctions based on sex or race, or that Defendants lacked disciplinary tools. Defendants offered no evidence that those students could not form sex-based animus or could not be controlled. Extending *Webster* to this record replaces its fact-specific reasoning with a categorical rule for alternative schools. Nothing in *Webster* excuses an employer from acting after receiving repeated notice of facially sexual and racial harassment.

B. The Opinion Is Out of Step with Title VII's Remedial Purposes and National Consensus

The Opinion departs from Title VII's remedial purpose in two related ways. *First*, it allows employers to discount reports of objectively racist or sexist conduct based on administrators' asserted lack of offense or on generalized assumptions about student behavior. Second, it makes liability turn on whether the complainant followed preferred procedures rather than on whether the employer knew or should have known of the harassment. Title VII is designed to eliminate workplace discrimination, not to reward employers for overlooking facially discriminatory abuse until an employee uses "magic words." Once an employee reports such conduct, the employer may not demand an additional declaration of subjective offense before its duty to respond arises.

The established rule requires notice of harassment, not ritualized words or forms. *See Sunbelt Rentals*, 521 F.3d at 319 (notice is satisfied if a reasonable employer would have known about the harassment). The Fourth Circuit's demand for explicit proof of subjective offense—even when the reported words are facially discriminatory—cannot be reconciled with Title VII's remedial aims or with the national consensus recognizing those words as inherently degrading. *See, e.g., Mosby-Grant v. City of Hagerstown*, 630 F.3d 326, 330 (4th Cir. 2010) ("Mosby-Grant heard recruits use other *racially charged remarks*, including the terms 'honky' and 'cracker.'") (emphasis added); *Bowen v. Missouri Dep't of Soc. Servs.*, 311 F.3d 878, 884 (8th Cir. 2002) ("Lee's two 'white bitch' epithets were explicitly racial and were directed specifically to Bowen, a white woman."); *Forrest v. Brinker Int'l Payroll Co.*,

LP, 511 F.3d 225, 229 (1st Cir. 2007) (“A raft of case law, however, establishes that the use of sexually degrading, gender-specific epithets, such as ‘slut,’ ‘c**t,’ ‘whore,’ and ‘bitch,’ with which Vashaw barraged Forrest at work, has been consistently held to constitute harassment based upon sex.”).

“At bottom, the employer’s knowledge of the misconduct is what is critical, not how the employer came to have that knowledge.” *See Cerros v. Steel Techs., Inc.*, 398 F.3d 944, 952 (7th Cir. 2005). “The relevant inquiry is therefore whether the employee adequately alerted her employer to the harassment, thereby satisfying her obligation to avoid the harm, not whether she followed the letter of the reporting procedures set out in the employer’s harassment policy.” *See id.* The Opinion places form over substance by requiring Plaintiff to follow the District’s specific procedures. What matters is what the District knew. At a minimum, the evidence that Plaintiff notified the District of sexual and racial harassment was sufficient to withstand summary judgment. The Opinion imposes additional requirements on Plaintiff that are inconsistent with the standards governing sexual and racial harassment claims.

This record squarely presents the question. Plaintiff submitted more than 67 written referrals—many coded as sexual harassment or intimidation—describing racial and sexual slurs, threats, and humiliating conduct. A Charleston Teacher’s Alliance survey and annual evaluations of the principal documented a broader climate of unchecked abuse and administrative inaction. Defendants’ own testimony confirmed knowledge of the slurs and a dismissive response to them. Defendant Coker, the District’s Director of Alternative Programs, testified that being called “fucking

white bitch” was not degrading or unwelcome to her and that she could not say whether others would find it offensive. No teacher testified that the conduct was acceptable. Yet the courts below treated administrators’ personal tolerance—and an assumption that high school students could not control themselves—as sufficient to defeat employer liability despite the District’s actual knowledge of the harassment.

This Court’s review is needed to restore the ordinary notice rule: an employee who gives her employer sufficient information to recognize actionable harassment need not also use prescribed channels or explain that facially discriminatory abuse is offensive. The Court should grant *certiorari* to prevent the decision below from converting Title VII’s practical notice inquiry into a heightened procedural and subjective standard.

C. This Issue Is Recurring and Important

The question presented is recurring and exceptionally important. Employees across industries report harassment through supervisors, disciplinary systems, emails, and other ordinary workplace channels. If the Opinion stands, employers within the Fourth Circuit may discount even repeated reports of facially discriminatory conduct unless the employee uses preferred procedures and expressly states that she—or others—felt offended. That rule will chill reporting, invite strategic ignorance, and be especially damaging in schools and other workplaces where harassment is too easily normalized as part of the environment. Review is necessary to ensure that Title VII’s protection does not depend on formalities the statute does not require.



CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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