No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LYNN M. KIPP,

Petitioner,

v.

BELLEFONTE AREA SCHOOL DISTRICT, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

---

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Lynn M. Kipp, Petitioner, Pro Se
745 Thomas Street
State College, PA 16803
(814) 222-2022
lynnkemails@gmail.com

INDEX TO APPENDICES

App.	Document	Page
A	Memorandum Opinion and Order of the Commonwealth Court of Pennsylvania, No. 263 C.D. 2023 (Oct. 7, 2025)	App. 1–46
B	Opinion and Order of the Court of Common Pleas of Centre County sustaining preliminary objections, No. 2019-4310 (Jan. 15, 2021)	App. 47–67
C	Order of the Court of Common Pleas of Centre County dismissing Fifth Amended Complaint with prejudice (Dec. 19, 2022)	App. 68–70
D	Opinions of the Court of Common Pleas of Centre County under Pa.R.A.P. 1925(a) (Marshall, J.; Ruest, S.J.) (June 23, 2023)	App. 71–99
E	Order of the Court of Common Pleas of Centre County on motion to seal, public version (June 19, 2020)	App. 100–101
F	Order of the Supreme Court of Pennsylvania denying petition for allowance of appeal, No. 2 MAL 2026 (July 28, 2026)	App. 102–104
G	Order of the Commonwealth Court of Pennsylvania denying reargument (Dec. 3, 2025) (not reproduced; see note)	App. 105
H	Superintendent's letter imposing second suspension (two days without pay), eight months after notice of the first suspension and Finding; served days later without a hearing on its contents (Jan. 18, 2019) (Fifth Am. Compl. Ex. 20a)	App. 106–110
I	Petitioner's written response to the second suspension letter (Jan. 24, 2019) (Fifth Am. Compl. Ex. 20b)	App. 111–121

APPENDIX A

Memorandum Opinion and Order of the
Commonwealth Court of Pennsylvania, No. 263 C.D. 2023
(October 7, 2025)

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lynn M. Kipp, Appellant	:	
v.	:	
Bellefonte Area School District, Board of School Directors, Michelle Saylor, Michelle Simpson, Kimberly Sharp, Nicolas Downs, Nicole Harris, and Michael Mussett	:	No. 263 C.D. 2023
	:	Submitted: August 8, 2025

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge
HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE FIZZANO CANNON FILED: October 7, 2025

Lynn M. Kipp (Kipp) appeals *pro se* from the June 19, 2020, order of the Court of Common Pleas of Centre County (trial court) granting in part the motion to seal certain exhibits to Kipp's previously filed complaint in this matter. Kipp also appeals the trial court's December 19, 2022, order sustaining preliminary objections filed by Appellees in this matter and dismissing with prejudice Kipp's Fifth Amended Complaint. Upon review, we affirm the trial court's June 19, 2020, order, vacate in part its December 19, 2022, order, and otherwise affirm. We also grant Appellees' motions to strike Kipp's reply brief and appendices to the extent that they contain extra-record allegations and evidence.

I. Factual and Procedural Background

Kipp filed her first complaint in January 2020. Appellees are the Bellefonte Area School District (District) and Board of School Directors (Board), former School Superintendent Michelle Saylor (Saylor), District Human Resources (HR) Director Michelle Simpson (Simpson), teacher and local teacher's union president Kimberly Sharp[1] (Sharp), teacher Nicolas Downs (Downs), teacher Nicole Harris (Harris), and teacher Michael Mussett (Mussett). Fifth Amended Complaint, Oct. 3, 2022, at 3-5.

Kipp avers that she had been a highly rated full-time teacher at an elementary school in the District since 2011 and an active teacher's union member for 17 years when the events giving rise to her lawsuit began. Fifth Amended Complaint at 6-14. In early April 2018, she reported to her school's principal that her students were given snacks during the prior year's Pennsylvania System of School Assessment[2] (PSSA) tests, which she believed violated testing protocols. *Id.* at 14. The principal decided that each teacher could decide whether to allow snacks during testing. *Id.* at 16. A news story soon came out about a teacher in another district who had given snacks during testing and been suspended. *Id.* After Kipp engaged in several meetings, discussions, and encounters with other staff and

[1] Sharp retained counsel separately from the other Appellees. To the extent her issues differ from those of the other Appellees, this Court will address them individually and distinguish the other Appellees as the "District Appellees." When Sharp's issues coincide with those of the other Appellees, they will be addressed collectively as "Appellees."

[2] These tests are given to all Pennsylvania students from third grade through eighth grade and are used to measure proficiency compared with state academic standards in English, math, and science. *See* https://www.pa.gov/agencies/education/data-and-reporting/assessment-reporting (last visited October 6, 2025).

teachers, Downs filed a formal complaint in April 2018 asserting that Kipp unlawfully harassed him; Simpson, the HR director, signed the complaint. *Id.* at 18.

At a May 2, 2018, meeting with a union representative present, Simpson told Kipp that a complaint had been filed against her that was being investigated and that the details and complainants' names were confidential under District policy. Fifth Amended Complaint at 24-26. Simpson told Kipp only that the substance involved reports of several "contentious verbal altercations" between Kipp and students, support staff, and professional staff on school grounds between 2013 and 2018. *Id.* at 24-26.

At a May 31, 2018, meeting with Simpson, which was not a formal *Loudermill*[3] hearing, Kipp was given a three-day unpaid suspension. Fifth Amended Complaint at 26-27. Kipp believed Simpson was using the harassment policy selectively and more severely on her than in instances involving other teachers. *Id.* at 33. She filed a responsive grievance, still feeling "in the dark" because Simpson would not tell her any specifics about the allegations against her. *Id.* at 34. Kipp requested a Board hearing on her grievance, which was held on August 14, 2018; she was told she could not bring a lawyer or witnesses on her behalf. *Id.* at 35-36. Her grievance was denied by the Board in December 2018 and escalated to the arbitration stage. *Id.* at 39-40. Her suspension was ultimately reduced to two days, which she served "against her wishes" in January 2019. *Id.* at 46. In light of the length of time since May 2018 and her belief that she was being "set up" by Appellees, Kipp filed a second grievance in January 2019. *Id.* at 48-49.

On February 21, 2019, at an after-school teacher's union meeting, union president Sharp confronted Kipp in what Kipp describes as a premeditated "ambush"

---

[3] A *Loudermill* hearing is a pre-termination hearing for a public employee that is required by due process. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

to "create hostility" and embarrass her before the other teachers, including Mussett and Harris, who had joined Downs's harassment complaint against her. Fifth Amended Complaint at 49-52. Sharp also asked Kipp in an accusatory tone if she had a role in some Right-to-Know Law (RTKL)[4] requests that had been made by an unnamed individual regarding Kipp's relationship with the District and several Appellees. *Id.*

The next day, Sharp appeared at Kipp's classroom towards the end of the school day with other union members and a school police officer, which Kipp believed was intended to intimidate her. *Id.* at 53-54. It is not clear what transpired at that meeting; however, on February 25th, Kipp was told by her principal to report to Superintendent Saylor's office with her personal belongings. *Id.* at 56. Saylor told Kipp she was being placed on immediate suspension with pay for "at least a few days" while the District investigated whether she violated District privacy policies by putting documents that included the names of those who filed the harassment complaints against her on view in the teachers' lounge. *Id.* at 57-58.

Kipp believed the suspensions were conspiratorial, premeditated, and ordered by the Board in a private meeting in violation of the Sunshine Act, 65 Pa.C.S. §§ 701-716. Fifth Amended Complaint at 59. On March 4th, she emailed the Board and Saylor with her suspicions. *Id.* She ultimately reported the Board's purported Sunshine Act violations to the district attorney's office; the Fifth Amended Complaint does not indicate the result of that communication. *Id.* at 99. Kipp sent another email regarding her situation to some other union members on March 6th. *Id.* at 59. On March 11th, Saylor sent Kipp a letter warning her against contacting any union members involved in the investigative process in her case. *Id.*

---

[4] Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

at 59. Kipp believed that Appellees were trying to silence her and isolate her from the union in violation of her First Amendment rights of free speech and association. *Id.* at 59-60.

On March 13th, Kipp received a letter from Saylor advising her that a *Loudermill* hearing was set for March 20th. Fifth Amended Complaint at 60. The hearing would concern several issues including the harassment complaint against her, whether she retaliated against the complainants, concerns over her relationship with her student teacher, and whether she violated confidentiality by putting confidential information regarding the complaint and investigation in the teachers' lounge. *Id.* at 60-61. She believed all of this was to cover up the District's initial error in allowing teachers to give students snacks during PSSA testing. *Id.* at 61-62. It appears that this hearing was rescheduled to April 18th. *Id.* at 69.

On March 14th, Kipp received an email that her local union had voted to remove her from her committee assignments on Sharp's motion. Fifth Amended Complaint at 63-64. She asked why she was excluded from that meeting but got no response. *Id.* at 64. She reported the issue to state union authorities, and the matter was set for another vote on April 25, 2019. *Id.* at 64-65. She was given only five minutes to speak by telephone at that meeting because she was not allowed on school property during her suspension; she was not permitted to ask any questions of the local union leadership. *Id.* at 65. The second vote also resulted in her removal from her committee assignments. *Id.* at 66.

Kipp avers that at the April 18th *Loudermill* hearing, District counsel provided no evidence to support the charges against her; instead, he asked her questions about her relationship with the union that she believed were "off limits" and violated her association rights. Fifth Amended Complaint at 70. On April 23rd,

Saylor told Kipp that she was recommending Kipp be terminated for retaliating against the harassment complainants. *Id.* at 71. Saylor refused to provide Kipp with more information about the allegations against her. *Id.* That evening, at a public Board hearing at which Kipp was present, the Board announced that it would be filing a "statement of charges"[5] formally advising her of the reasons for termination. *Id.* at 72. On April 26th, Saylor told Kipp that the Board supported moving forward with termination and that she was indefinitely suspended without pay effective immediately. *Id.* at 73-74. Kipp filed another grievance. *Id.* at 75.

Kipp received the statement of charges in early May 2019. Fifth Amended Complaint at 75. The statement presented 11 charges including retaliating against the teachers who filed the harassment complaint and participated in its investigation, violating confidentiality policies by putting confidential investigation documents in the teacher's lounge,[6] violating an order to refrain from contacting her student teacher after being suspended in February 2019, violating confidentiality by allegedly having her husband contact her student teacher on her behalf, engaging in contact with multiple students and one parent that led to reports to the District, and creating a hostile environment at the school. Statement of Charges, May 9, 2019; Exh. 37 to Kipp's Second Amended Complaint.[7] The statement gave Kipp the

[5] A "statement of charges" is part of the *Loudermill* termination process and is intended to give the employee sufficient notice of the proposed reasons for termination prior to the hearing. *See Vladimirsky v. Sch. Dist. of Phila.*, 144 A.3d 986, 1000 (Pa. Cmwlth. 2016).

[6] The statement of charges explained that although Kipp denied putting the reports in the lounge, only a few individuals had the reports and the documents in the lounge had markings and notes on them that Kipp acknowledged were hers. Statement of Charges at 4.

[7] It is settled that "[a]n amended complaint has the effect of eliminating the prior complaint" and that claims or even legal theories that are not reiterated in the amended complaint will be "lost" to the plaintiff. *Hionis v. Concord Twp.*, 973 A.2d 1030, 1036 (Pa. Cmwlth. 2009).

option of a hearing or arbitration. *Id.* She chose arbitration and filed another grievance. *Id.*

Kipp alleged that later in May, due to emotional distress, she developed physical ailments including grinding her teeth so severely that she broke a tooth and then developed an infected jawbone. Fifth Amended Complaint at 82. Her colleagues and other union members ostracized her. *Id.* at 83. The Fifth Amended Complaint's averments of fact end there, with Kipp suspended and her various grievances proceeding through arbitration.

It is less clear, however, whether the exhibits to a prior complaint, which remain part of the certified record, are similarly negated. *See* Pa.R.A.P. 1921 (stating that "original papers and exhibits filed in the lower court . . . shall constitute the record on appeal"). This Court has explained that "[d]ocuments, the contents of which are alleged in [a] Complaint and which no party questions, but which are not physically attached to the pleading, may be considered on [a] motion to dismiss for failure to state a claim." *Feldman v. Hoffman*, 107 A.3d 821, 836 (Pa. Cmwlth. 2014) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir.1993)). This is particularly so when the documents in question "form[] in part the foundation" of the plaintiff's suit even if they are not attached or specifically incorporated into the pleading as permitted by Rule of Civil Procedure 1019(g). *Id.*; *see also* Pa.R.Civ.P. 1019(g).

Here, Kipp's Fifth Amended Complaint did not physically attach or expressly incorporate by reference the exhibits to her prior complaints, including the District Appellees' statement of charges. However, this document is part of the certified record, is the only one of its kind, and no party to this action questions its existence. Kipp discussed it substantively in the Fifth Amended Complaint. It constituted, at least in part, the "foundation of her suit" because it formally set forth Appellees' reasons for suspending her without pay and moving to terminate her, which led directly to her commencing this action against them. Fifth Amended Complaint at 75, 94. Lastly, both Appellees stated in their preliminary objections to the Fifth Amended Complaint that Kipp failed to state a claim for any of her allegations, which comports with the above-quoted statement from *Feldman*. *See* District Appellees' Preliminary Objections to Fifth Amended Complaint at 4-11; Sharp's Preliminary Objections to the Fifth Amended Complaint at 12-22. As such, the District Appellees' statement of charges may be considered in our consideration below of whether the trial court correctly determined that Kipp's Fifth Amended Complaint failed to state a claim upon which relief could be granted.

After filing her original complaint in January 2020, Kipp proceeded to file multiple amended complaints, often without the trial court's permission or Appellees' consent. Trial Ct. Op., June 23, 2023, at 4. In February 2020, she sought recusal of the first assigned trial court judge and removal of Sharp's counsel due to a purported conflict of interest with his role as union counsel. *Id.* The Board moved to seal some of Kipp's exhibits on the basis that they revealed confidential information, including the names of students and parents who reported issues with her, and needed to be sealed to protect the complainants from retaliation. *Id.* at 4. Appellees filed preliminary objections to some of Kipp's complaints, but it was often unclear which was the controlling complaint. *Id.* at 5.

On June 19, 2020, after a hearing, the first judge issued an order denying Kipp's motions for recusal and removal of Sharp's counsel, partially granting the Board's motion to seal, and deeming the most recently filed complaint, to which Appellees had filed preliminary objections, the operative pleading in the matter. Trial Ct. Op., June 23, 2023, at 9. Kipp appealed that order to this Court, which quashed the appeal in a *per curiam* memorandum and order because the trial court's order was interlocutory. *See Kipp v. Bellefonte Area Sch. Dist.* (Pa. Cmwlth. No. 938 C.D. 2020, filed Oct. 5, 2021) (unreported). The first judge subsequently recused herself to negate the appearance of impropriety. Trial Ct. Op., June 23, 2023, at 9.

After a September 2020 hearing on Appellees' preliminary objections, the trial court issued a January 15, 2021, opinion. Trial Ct. Op., Jan. 15, 2021. The court determined that Kipp violated Rule of Civil Procedure 1033(a), Pa.R.Civ.P. 1033(a), by failing to obtain either the court's permission or Appellees' consent to amend her complaints; that Kipp failed to exhaust her administrative remedies by

waiting for completion of the various arbitration proceedings on her grievances before filing suit; that the Board, Superintendent Saylor, and HR Director Simpson had high public official immunity against Kipp's state-law based claims sounding in defamation, civil conspiracy, and intentional infliction of emotional distress (IIED); that Kipp failed to state a case against teachers Downs, Harris, and Mussett for defamation, civil conspiracy, or IIED; and that Kipp failed to state a case for her Section 1983[8] due process and First Amendment civil rights claims against all Appellees. *Id.* at 4-18. The court dismissed Kipp's complaint but did so without prejudice and granted Kipp 30 days to file a revised complaint in compliance with the rules and with substantive legal sufficiency. *Id.* at 20.

In February 2021, Kipp filed two duplicative amended complaints. Trial Ct. Op., June 23, 2023, at 13. Kipp also filed four duplicative appeals of the trial court's January 2021 order, which were quashed by this Court as interlocutory in light of Kipp's February 2021 amended complaint. *See Kipp v. Bellefonte Area Sch. Dist.* (Pa. Cmwlth. No. 475 C.D. 2021, filed Sept. 20, 2021) (unreported). In August 2022, Kipp filed yet another amended complaint without the court's permission or Appellees' consent. Trial Ct. Op., June 23, 2023, at 15. Later that month, the trial court again permitted Kipp to file another complaint with the proviso that if that complaint failed to comply with the rules of civil procedure, her case would be dismissed with prejudice. *Id.* at 16. In October 2022, Kipp filed what would be her final amended complaint; this was her eighth filed complaint but is referred to as her Fifth Amended Complaint. *Id.* at 17. Appellees filed preliminary objections. *Id.*

---

[8] Section 1983 allows individuals to sue persons acting under color of state law for deprivation of federally protected constitutional rights. *See* 42 U.S.C. § 1983.

After a hearing, the trial court issued a December 19, 2022, order sustaining Appellees' preliminary objections and dismissing Kipp's Fifth Amended Complaint with prejudice. Trial Ct. Order, Dec. 19, 2022. The court noted that it had given Kipp "numerous opportunities" to file an acceptable and legally sufficient complaint, but the Fifth Amended Complaint still failed to conform with "a number of" local filing and civil procedure rules including Civil Procedure Rule 1019(a)'s directive that material facts be stated "in a concise and summary form." *Id.* at 1. The court added that the Fifth Amended Complaint, being filed in a compressed form with four pages on a single page with small font was "practically unreadable." *Id.* at 2. To the extent the Fifth Amended Complaint could be read, it lacked "any substantive changes in the factual allegations" from those in Kipp's previously dismissed complaints. *Id.* The court stated that further amendment would not only be futile but prejudicial to Appellees after three years of litigation during which Kipp failed to produce a viable complaint. *Id.*

In its subsequent opinion, the court relied on the December 2022 order and its January 2021 opinion on the merits of Appellees' preliminary objections to one of Kipp's prior complaints. Trial Ct. Op., June 23, 2023, at 20-21. The first judge also wrote an opinion in support of her June 2020 decision to seal certain exhibits from Kipp's complaints. Ruest Opinion, June 23, 2023, at 7. Kipp timely appealed to this Court and this matter is now ripe for disposition.

II. Issues

Kipp appeals the first trial judge's June 19, 2020, order granting the Board's motion to seal certain exhibits to Kipp's then-current complaint; as noted, this Court quashed Kipp's previous appeal of that order because it was interlocutory

at that time. Kipp also appeals the current trial judge's December 19, 2022, order sustaining Appellees' preliminary objections and dismissing with prejudice Kipp's Fifth Amended Complaint, which alleged Section 1983 procedural due process violations, Section 1983 First Amendment violations, defamation and reputational rights violations, IIED, and malicious prosecution.[9]

III. Discussion

A. Trial Court Order Sealing Exhibits

A request to seal or unseal judicial records "is a matter committed to the discretion of the court whose records are at issue." *Milton Hershey Sch. v. Pa. Hum. Rels. Comm'n*, 226 A.3d 117, 127 (Pa. Cmwlth. 2020). The party seeking to seal a record must show "that [the] interest in secrecy outweighs the presumption of openness." *Id.* at 128. "Where the presumption of openness attached to a public judicial document is outweighed by circumstances warranting closure of the document to public inspection, access to the document may be denied." *Id.* Thus, judicial records may be sealed to protect "the privacy rights of individuals," including non-parties, although the reasons for nondisclosure must exceed "general concerns for harassment or invasion of privacy." *Id.* at 127.

---

[9] Kipp's malicious prosecution assertions are limited to three paragraphs in her Fifth Amended Complaint that generally reiterate her position that the harassment charges brought against her were baseless. Fifth Amended Complaint at 105-06. As a matter of law, malicious prosecution in the civil context requires that the proceedings underlying the claim "have terminated in favor of the person against whom they are brought." 42 Pa.C.S. § 8351(a)(2). There is no evidence in the record and Kipp has not asserted that any of the charges against her have been resolved in her favor. Moreover, she failed to develop a malicious prosecution argument in either her principal or reply brief. As such, this issue is waived. *See Gun Owners of Am., Inc. v. City of Phila.*, 311 A.3d 72, 85 (Pa. Cmwlth. 2024) (stating that "[w]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived").

Section 7.0(A)(5) of the Case Records Public Access Policy adopted by Pennsylvania Unified Judicial System (UJS) bars inclusion of a minor's name on any document filed with a court unless the minor is a criminal defendant and the information is filed on a contemporaneous confidential information form. *See* http://www.pacourts.us/public-records/public-records-policies (last visited October 6, 2025). Section 7.0(F) states that if a filed document does not comply with the foregoing rules, the court may seal it. *Id.*

Here, the Board moved in February 2020 for the trial court to seal multiple exhibits to Kipp's then-current complaint. After argument, the first trial judge granted the Board's motion in part. Trial Ct. Order, June 19, 2020. The order sealed one exhibit because it included a minor student's full name. *Id.* The order also sealed exhibits containing the District's confidential investigation reports, which contained personal information that could be used to retaliate against the complainants and other involved individuals. *Id.*

Kipp does not assert that she complied with the UJS public access policy's requirements. She argues generally that the trial court's sealing of some of her complaint exhibits "gives the impression that she did something wrong." Kipp Br. at 29. She asks this Court to reverse the trial court's order so the public can see that the "petty allegations" lodged against her do not amount to the unlawful harassment of which she has been accused. *Id.* at 55. The Board responds that the UJS expressly bars unredacted publication of a minor's name and that given the nature of Kipp's dispute with Appellees, including the three named teacher defendants, sealing the confidential reports to prevent retaliation based on publication of their personal information was proper. District Appellees Br. at 10-12.

We agree with the Board. First, the judge's order did not wholly grant the Board's motion, which sought to seal over 30 of Kipp's exhibits. The order limited its scope to the sole document that fully named a minor student; this comported with the UJS public access policy and also with the District's policy for harassment complaints.[10] With regard to the confidential investigative reports, which revealed complainants' home addresses and phone numbers as well as the names of non-parties involved in the investigation, the order reflects a determination that any public interest in these proceedings is outweighed by the interests of those individuals in their privacy, including their concerns regarding potential retaliation. That determination was well within the first trial judge's discretion and is affirmed.[11]

B. Compliance of Fifth Amended Complaint with Rules of Civil Procedure

Rule of Civil Procedure 1019(a) states that in a complaint, the material facts on which the cause of action is based "shall be stated in a concise and summary form." Pa.R.Civ.P. 1019(a). This Court has held that "[i]f a complaint cannot be read, it does not state a cause at all, let alone in a concise and summary form. The purpose of this rule is to require the plaintiff to disclose the material facts sufficient

---

[10] *See* https://go.boarddocs.com/pa/bellasd/Board.nsf/Public?open&id=policies# (last visited October 6, 2025) (stating that "the privacy of the charging party and the person accused of the unlawful harassment shall be kept as confidential as possible, consistent with the district's legal obligations and the necessity to investigate allegations and to take disciplinary action"). We may take judicial notice of this policy as it is a publicly available record. *See In re F.B.*, 726 A.2d 361, 366 n.8 (Pa. 1999) (taking notice of school district policy on searches of student property).

[11] Relatedly, Appellee Sharp and the District Appellees filed in this Court separate motions to strike Kipp's reply brief on the basis that it was not responsive to Appellees' briefs and included appendices with extra-record allegations and evidence not of record or in Kipp's controlling Fifth Amended Complaint. Appellees' motions are granted such that any cumulative or non-record information in Kipp's reply brief and appendices has not been considered by this Court in our review of this appeal.

to enable the adverse party to prepare the case." *Bennett v. Beard*, 919 A.2d 365, 367 (Pa. Cmwlth. 2007).

Here, the trial court's December 19, 2022, order dismissed with prejudice Kipp's Fifth Amended Complaint partly because it "patently fails to conform to a number of the Rules of Civil Procedure . . . including but not limited to [Rule] 1019(a) for being practically unreadable due to being submitted as four (4) scanned pages printed to one (1) single page and for being 117 pages in length[.]" Trial Ct. Order, Dec. 19, 2022, at 2. The order stated that over the course of this litigation, Kipp "has had more than ample opportunity to comply with the [c]ourt's directives and the Pennsylvania Rules of Civil Procedure" yet has "consistently and repeatedly failed to cure the defects in her [c]omplaint[.]" *Id.* The District Appellees and Appellee Sharp largely echo the trial court's criticism. District Appellees' Br. at 35-37 & Sharp's Br. at 13. Kipp asserts that she "tried her best with uncertainty regarding what [the trial court] wanted her to fix" and that she "certainly did not mean to file [the Fifth Amended] Complaint as four (4) pages per sheet. Her view was only one page when she uploaded it." Kipp Br. at 47.

The trial court's frustration is perhaps understandable, given the court's direct experience with this litigation over several years, during which time Kipp has filed multiple amended and often prolix complaints, sometimes without the court's permission. However, Appellees have filed preliminary objections responding to the substantive allegations in Kipp's complaints, including the Fifth Amended Complaint, and Appellees' briefs to this Court include arguments addressing those allegations. This demonstrates that Appellees are able to discern the nature of Kipp's claims and prepare their cases accordingly. Moreover, this Court is also able, with the assistance of technology, to expand and read the Fifth Amended Complaint. As

such, the trial court's December 19, 2022, order is vacated to the extent it dismissed the Fifth Amended Complaint for failure to comply with procedural rules.

However, the trial court's order also stated that the Fifth Amended Complaint contains no discernible substantive changes from the factual allegations in Kipp's prior complaints, one of which the court dismissed without prejudice for legal insufficiencies in its January 2021 order and opinion addressing the substance and merits of Kipp's claims.[12] The trial court relied on that opinion in its June 2023 opinion in this appeal. Trial Ct. Op., June 23, 2023, at 21. Accordingly, we will address the merits of this appeal.

C. Preliminary Objections

In ruling on preliminary objections, we accept as true all well-pleaded material allegations in the petition for review and any reasonable inferences that we may draw from the averments.[13] *Thomas v. Corbett*, 90 A.3d 789, 794 (Pa. Cmwlth. 2014). The Court, however, is not bound by legal conclusions, unwarranted inferences from facts, argumentative allegations, or expressions of opinion encompassed in the petition for review. *Id.* We may sustain preliminary objections only when the law makes clear that the petitioner cannot succeed on her claim, and we must resolve any doubt in favor of the petitioner. *Id.* "We review preliminary objections in the nature of a demurrer under the above guidelines and may sustain a

[12] Kipp's appeal of that order was quashed by this Court in light of the trial court's dismissal being without prejudice and Kipp's subsequent amendment of her complaint. *See Kipp v. Bellefonte Area Sch. Bd.* (Pa. Cmwlth. No. 475 C.D. 2021, filed Sept. 20, 2021 (unreported)).

[13] Where a court of common pleas dismisses a complaint based on preliminary objections, this Court's review is limited to determining whether the trial court committed an error of law or an abuse of discretion. *Minor v. Kraynak*, 155 A.3d 114, 121 (Pa. Cmwlth. 2017).

demurrer only when a petitioner has failed to state a claim for which relief may be granted." *Id.*

1. Section 1983/Procedural Due Process

To state a claim under Section 1983 for a deprivation of procedural due process rights, a petitioner must allege that: (1) he or she was deprived of an individual interest that is encompassed within the United States Constitution's Fourteenth Amendment protection of life, liberty, or property; and (2) the procedures available to him or her did not provide due process of law. *Todora v. Buskirk*, 96 A.3d 414, 420 (Pa. Cmwlth. 2014). In the context of public employees like teachers, the standard for procedural due process is set forth in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985):

> The essential requirements of due process . . . are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

Id. at 546 (citations omitted).

Such employees are entitled to a "*Loudermill*" hearing prior to termination from their positions. *Veit v. N. Wales Borough*, 800 A.2d 391, 398 (Pa. Cmwlth. 2002). However, the United States Supreme Court has held that procedural due process requirements may be flexible depending on the circumstances and that a full prior hearing is not necessarily warranted prior to a suspension as opposed to

termination, as long as adequate due process is ultimately provided. *Id.* (citing *Gilbert v. Homar*, 520 U.S. 924 (1997)). This is the case whether the suspension is with or without pay. *See Burger v. Bd. of Sch. Dir. Of McGuffey Sch. Dist.*, 839 A.2d 1055, 1062 (Pa. 2003) (holding that a school board possesses implied authority to suspend a school superintendent accused of improper conduct on an interim basis, without pay and benefits, pending a termination hearing).

A tenured teacher will usually warrant a higher level of process than a school administrator. *Id.* at 1061 & n.10. Nonetheless, this Court has held that a teacher may be suspended without pay if charges against him or her constitute "serious misconduct," which is not specifically defined but may include a physical altercation, use of profane language, or other conduct that "foster[s] a toxic environment at school." *Sweda v. Upper Bucks Cnty. Tech. Sch.* (Pa. Cmwlth. No. 282 C.D. 2023, filed May 20, 2024), slip op. at 22-24, 2024 WL 2264720, at **10-11 (unreported).[14]

In its January 2021 opinion, the trial court pointed out that although Kipp did not receive a pre-termination *Loudermill* hearing until April 2019, her own recitation of the facts reflected multiple instances of prior due process provided by the District Appellees in association with her suspensions, including multiple meetings and written communications including notices and summaries of the harassment complaints against her and proposed disciplinary measures. Trial Ct. Op., Jan. 15, 2021, at 16. As such, the trial court concluded Kipp had not presented a legally sufficient claim of procedural due process violations. *Id.*

[14] This Court's unreported memorandum opinions may be cited for their persuasive value. *See* Section 414 of the Commonwealth Court's Internal Operating Procedures. 69 Pa. Code § 69.414.

Kipp acknowledges that her procedural due process allegations in her Fifth Amended Complaint "contain the same facts" as her previous complaints "except with more specific details about each Appellee." Kipp Br. at 34. She maintains that the trial court erred in finding that those allegations failed to sufficiently state a cause of action. *Id.* at 29-34. The District Appellees support the trial court's analysis and determination. District Appellees Br. at 19-22.

Kipp's Fifth Amended Complaint stated that prior to her first suspension, HR Director Simpson advised her of the harassment charges against her at a May 2, 2018, meeting where a union representative was also present. Fifth Amended Complaint at 24. Kipp was told that the complaints against her were formal and, therefore, many details had to remain confidential in compliance with District policy. *Id.* at 24-25. Simpson emailed Kipp the next day that the complaints pertained to multiple "contentious verbal altercations" involving Kipp between 2013 and 2018. *Id.* at 25.

The Fifth Amended Complaint added that on May 31, 2018, Simpson met with Kipp and a second union representative; she handed Kipp a document stating that after investigating, she concluded that Kipp's conduct violated District harassment policies, that Superintendent Saylor agreed, and that Kipp would be suspended for three days without pay. Fifth Amended Complaint at 26-27. After Kipp filed a grievance regarding the suspension, a non-*Loudermill* hearing was held before the Board in August 2018. *Id.* at 35. Although Kipp asserted that the hearing was flawed because she was not permitted to bring her personal attorney or character witnesses, she acknowledged that she was given 20 minutes to speak on her own behalf. *Id.* at 36-37. Her grievance was ultimately denied by the Board and escalated to the arbitration stage. *Id.* at 39. Then, at a January 2019 meeting with Saylor and

a union representative, Kipp was told that her suspension was reduced from three days to two days. *Id.* at 44. She served the suspension the next week and filed a grievance about it. *Id.* at 46-48.

Kipp's Fifth Amended Complaint next alleged the following facts leading to her second suspension. On February 21, 2019, Appellee Sharp confronted her in a hostile manner at an after-school union meeting and asked her about RTKL requests made by an unnamed individual regarding Kipp's relationship with the District and several of the Appellees. Fifth Amended Complaint at 49-50. The next day, copies of the confidential harassment complaints against her, including the names of the complainants, were placed visibly in the teacher's lounge. *Id.* at 54 & 58. After school, Sharp again confronted Kipp, with other union members present. *Id.* at 53-54. The next Monday, Kipp was told by her principal to report to Superintendent Saylor's office and bring her personal belongings. *Id.* at 56. Saylor told her that she was being placed on immediate paid suspension while the incidents were investigated. *Id.* at 57. While suspended, Kipp sent emails to the Board, Saylor, and to some union members stating that she was going to report the Board for making decisions about her situation out of the public eye and in violation of the Sunshine Act. *Id.* at 59.

Kipp received a *Loudermill* hearing notice indicating that the subject matter was her alleged retaliation against individuals involved in the harassment complaints against her and whether she put the documents with the complainants' names in the teachers' lounge in violation of privacy policies. Fifth Amended Complaint at 59-61. Kipp expressed criticisms about the April 2019 hearing, including assertions that the attorneys for the District and the teachers' union joined

forces against her and that she still had not been told who lodged the harassment complaints against her. *Id.*

Days later, on April 23rd, Saylor met with Kipp and HR director Simpson and announced that she was recommending to the Board that Kipp be terminated for retaliating against the individuals involved in the harassment complaints against her. Fifth Amended Complaint at 71. That evening, the Board held a public hearing, which Kipp attended, and announced that it would be filing a "statement of charges" formally advising her of its reasons. *Id.* at 72. Days later, Saylor told Kipp that the Board had approved Saylor's recommendation to terminate Kipp and that she was now indefinitely suspended without pay. *Id.* at 73-74 & 77.

Kipp received the statement of charges shortly thereafter. Fifth Amended Complaint at 75. The statement gave her the option of a hearing or arbitration. *Id.* She chose arbitration and filed another grievance. *Id.*

Our review of Kipp's alleged facts supports the trial court's conclusion that she failed to state a claim that she did not receive adequate due process. Prior to her first three-day unpaid suspension, two meetings with HR Director Simpson and union representation were held and an email was sent by Simpson explaining the charges within the limitations of the District's privacy policy. When Kipp grieved the first suspension prior to serving it, a Board hearing was held at which she had 20 minutes to speak. After the grievance was denied, it proceeded to the arbitration stage. The suspension was ultimately reduced to two days, which Kipp served before filing a second grievance.

Although Kipp did not receive a full *Loudermill* hearing prior to her first suspension, such hearings are generally associated with termination or indefinite suspensions. *See, e.g., Ray v. Brookville Area Sch. Dist.*, 19 A.3d 29, 31

(Pa. Cmwlth. 2011). A suspension for a limited and short period of time will generally not warrant a *Loudermill* hearing. *See N. Allegheny Sch. Dist. v. N. Allegheny Fed'n of Teachers* (No. 1379 C.D. 2019, filed Nov. 9, 2020), slip op. at 2 & n.1, 2020 WL 6555152, at *1 & n.1 (unreported) (noting that teacher's initial misconduct led to one-day suspension without *Loudermill* hearing, which was ultimately held after additional incidents and prior to suspension without pay and termination). As such, the trial court properly concluded that Kipp's initial suspension did not warrant a full *Loudermill* hearing and that the communications and two meetings she received were adequate procedural due process.

The record shows that Kipp's next suspension in February 2019 was indefinite but paid pending investigation of the two encounters with Sharp. A *Loudermill* hearing was held in April 2019, after which Saylor recommended dismissal to the Board, which agreed in a public hearing and filed a statement of charges in accordance with *Loudermill*, after which Kipp was indefinitely suspended without pay while the matter went to arbitration. Although Kipp expresses multiple personal criticisms of the process she received, her factual allegations do not reflect that she was denied any formal aspect of process in 2019. The District and Board had to comply with confidentiality policies regarding the harassment complaints. However, given Kipp's naming of the complainants in her lawsuit, she was never truly "in the dark" about the reasons she was subjected to discipline, nor was she denied opportunities to speak on her own behalf within the established rules of the various meetings and hearings that were held.

Moreover, the statement of charges ultimately issued by the Board in May 2019 and attached as an exhibit to Kipp's Fifth Amended Complaint reflects its conclusion that Kipp's return to the school after her February 2019 suspension

would worsen the hostile environment her presence had already created since late 2018 and that her actions to that point constituted the kind of "serious misconduct" that this Court discussed in *Sweda* as warranting an unpaid suspension without further process, particularly in anticipation of termination. Accordingly, we find the trial court did not err or abuse its discretion in sustaining the District Appellees' preliminary objections in this regard.[15]

Regarding Kipp's allegations within her Section 1983 procedural due process claim that the Board engaged in decisions regarding her case in private sessions in violation of the Sunshine Act, the trial court noted correctly that such challenges "shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated[.]" 65 Pa.C.S. § 713. Further, "in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting." *Id.* Kipp's Fifth Amended Complaint alleges that the Board made improper "behind the scenes" decisions when it approved her initial three-day suspension in May 2018; suspended her indefinitely with pay in February 2019 prior to the announcement at its public hearing on April 23, 2019, that a statement of charges would be filed; and suspended her indefinitely without pay as of April 26, 2019. Fifth Amended Complaint at 41.

Kipp's original complaint was filed in January 2020. Pursuant to the second quoted phrase from Section 713 of the Sunshine Act, the time to file a

[15] Appellee Sharp argues separately that as a teacher and union official sued in her individual capacity, she cannot be liable for any procedural due process violations because she held no authority under state law to provide, much less deprive Kipp of procedural due process, nor did Kipp's Fifth Amended Complaint allege any facts to that effect. Upon review of the Fifth Amended Complaint, we agree. Kipp asserted only that Sharp instigated two hostile encounters with Kipp prior to her suspension in February 2019, not that Sharp had any role in communicating or scheduling meetings or hearings related to Kipp's disciplinary proceedings.

challenge to any Board action taken in a non-open meeting prior to January 2019 had expired by then. Accordingly, the time for Kipp to challenge any allegedly improper actions taken by the Board prior to its May 2018 imposition of Kipp's initial three-day suspension had elapsed by the time she filed her first complaint.

Similarly, Kipp alleges that she believed her February 2019 and April 2019 suspensions violated the Sunshine Act as soon as they took effect and that, in fact, after she was suspended in February 2019, she reported a suspected violation to the district attorney in March 2019. Kipp does not assert that the district attorney took any action on the report. The consequence is that under the Sunshine Act's version of the discovery rule, Kipp had to formally bring her personal or private "legal challenge" against the Board (as opposed to merely reporting it to the district attorney) no later than March 2019 for the February 2019 suspension or May 2019 for the April 2019 suspension. Although her inclusion of her allegations in her January 2020 complaint occurred within a year of the purported violations, they were still untimely, and the trial court did not err in sustaining the District Appellees' preliminary objections in this regard.

2. Section 1983/First Amendment

To prevail on a First Amendment retaliation claim, the plaintiff must show "(1) that the activity at issue was in fact protected; and (2) that the protected activity was a substantial factor in the alleged retaliatory action." *Todora v. Buskirk*, 96 A.3d 414, 417 (Pa. Cmwlth. 2014). Whether speech is constitutionally protected is a question of law for the court. *Id.* When a public employee claims that her employer retaliated for First Amendment activity, the employee must establish that the speech related to a matter of public concern. *Id.* Speech implicates a "public

concern" if its content or context addresses a matter of political, social, or other area of interest to the community. *Id.* This contrasts with speech on matters that are purely personal or private to the employee, whose motive in speaking is "important, but not dispositive." *Id.*

A governmental employer may exercise a certain degree of control over a public employee's speech and may take disciplinary measures if the speech causes or is likely to cause disruption of the entity's operations. *Carr v. Dep't of Transp.*, 230 A.3d 1075, 1087-90 (Pa. 2020). A reviewing court must balance the public employee's interest "as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id.* (quoting *Pickering v. Bd. of Educ. of Twp. High Sch. Dist.*, 391 U.S. 563, 568 (1968)).

A governmental employer may also defeat a retaliation claim by "demonstrating that the same adverse action would have taken place in the absence of the allegedly protected conduct." *Todora*, 96 A.3d at 417. There, a corrections officer alleged that after he filed a lawsuit against county defendants asserting exposure to toxic mold while working, he was unfairly disciplined in retaliation. 96 A.3d at 416. This Court examined federal case law distinguishing between matters of genuine public concern, such as racial discrimination and allegations of local governments providing poor public services, and speech related to personal dissatisfactions or "mundane employment grievances." We deduced that when a public employee speaks "as an employee upon matters only of personal interest, absent the most unusual circumstances, a court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior." *Id.* at 419. This Court agreed with the trial

court that the officer's lawsuit did not seek "injunctive relief to protect the safety of the public"; rather it was primarily "about conditions of employment" and "a personal injury action to recover money damages." *Id.* As such, the lawsuit was not protected speech. *Id.* Moreover, the record contained other reasons for the employer's discipline such that the officer had not established that his lawsuit was a substantial factor in that action. *Id.* at 419-20.[16]

In its January 2021 merits opinion, the trial court stated that Kipp's actions in contacting the complainants and others involved in the harassment complaints against her were not constitutionally protected conduct and that Saylor's warning to Kipp that her conduct violated District confidentiality policies and could lead to her termination did not amount to retaliatory action. Trial Ct. Op., Jan. 15, 2021, at 17. *Id.* In her brief, Kipp reiterates the arguments from her Fifth Amended Complaint while the District Appellees echo the trial court's conclusions. Kipp Br. at 33 & 48-49; District Appellees Br. at 25-29.

Although the trial court did not directly address Kipp's allegation that the harassment complaints against her were retaliation for her threats to report the PSSA snacks issue or her reporting the District and Board for their alleged mistreatment of her, we can address these issues through a review of her Fifth Amended Complaint. Regarding the PSSA snacks issue, Kipp did not allege that she reported the issue publicly or even to the school community. She stated only that she raised her concerns with the school principal and that this led to a concerted

[16] Our First Amendment retaliation cases share similarities with cases like *Javitz v. Luzerne County*, 293 A.3d 570 (Pa. 2023), which involved a public employee who was terminated after she reported suspicions that another public employee violated the Wiretap Act by secretly recording an investigatory hearing. In that litigation, our Supreme Court vacated a prior determination by this Court and remanded to this Court for further proceedings. Despite the similarities, which our Supreme Court pointed out, *Javitz* is in our courts on state whistleblower law issues, not First Amendment issues, making it inapposite here. *See id.* at 585 n.20.

effort by Saylor, Simpson, and the Board to manufacture other teachers' complaints against Kipp to "silence her" from reporting the alleged violations to state testing authorities. *See* Fifth Amended Complaint at 32-33 & 99. We acknowledge that PSSA testing violations involving improper provision of snacks could pose a public concern and to the extent that Kipp expressed an intent to report the matter, her speech implicated First Amendment concerns. However, as will be addressed below, the District's statement of charges setting forth its basis for disciplining Kipp, which she included as an exhibit to the Fifth Amended Complaint, demonstrated "that the same adverse action would have taken place in the absence of the allegedly protected conduct." *Todora*, 96 A.3d at 417.

Regarding Kipp's attempts to personally contact the complainants and other individuals involved in the investigations, she averred that she emailed "some" other teachers on March 6, 2019, "about her employment situation" in a way that "did not contain anything improper." Fifth Amended Complaint at 59. She asserted that she did this to reach out to them as fellow union members for assistance in her distress over being suspended and that her email was protected by her free speech and association rights. *Id.* at 60. Unlike the PSSA snacks issue, Kipp's interest in her ongoing employment dispute with Appellees sounds in the kind of personal employment issues that have been found ineligible for protection since they do not raise or implicate a public concern. *Todora*, 96 A.3d at 418-19.

Kipp next alleges that in January and March 2019 she reported to the district attorney's office that the District violated the Sunshine Act by discussing her case and deciding to suspend her in its executive session away from a public hearing. Fifth Amended Complaint at 99. As noted, a public employee's report of alleged governmental misconduct to authorities may constitute protected speech as well as

a valid public concern. *See Carr*, 230 A.3d at 155-56. Although the officer in *Todora* filed a personal injury lawsuit and did not, like Kipp, report an alleged Sunshine Act violation, we may consider her motive. *Todora*, 96 A.3d at 417. After reviewing Kipp's Fifth Amended Complaint, we conclude that her report to the district attorney's office alleging Sunshine Act violations was not intended to uncover systemic abuses by the Board and District, of which her case was but one, but to combat what she perceived as actions taken on her case.

Moreover, Kipp's Fifth Amended Complaint and exhibits undermine the legal sufficiency of her retaliation claims because they reveal that the Board and District had sufficient alternative reasons to suspend her and ultimately seek her termination even if she had not reported the alleged Sunshine Act violations. *See Todora*, 96 A.3d at 417. On May 3, 2018, HR Director Simpson advised Kipp that her reported and documented "contentious verbal altercations" with various individuals since 2013 were under review in light of her 2018 recent disputes over the PSSA snack issue. Fifth Amended Complaint at 25. Kipp was suspended for three days (later reduced to two days) without pay based on violations of harassment, privacy, and retaliation policies involving teachers, professional staff, and students. *Id.* at 26. Then, Kipp was involved in two incidents with Appellee Sharp and an email dispute with Appellee Downs during February 2019. *Id.* at 49-56.

Kipp attached as an exhibit to a prior complaint the District's statement of charges from May 2019, which was issued after her April 2019 *Loudermill* hearing and in association with the Board's announcement at the public Board

meeting several days later.[17] Exh. 37 to Kipp's Second Amended Complaint.[18] The statement recounted multiple unheeded warnings to Kipp to refrain from threats or improper contact with the harassment complainants and other individuals involved in the original investigations; stated that she breached confidentiality and sought to intimidate the complainants by placing investigation documents with their names and personal information in the teachers' lounge, which the Board attributed to Kipp because the documents contained handwritten notes that she admitted were hers; that she improperly tried to influence her student teacher regarding her disputes with Appellees, both before she was suspended in February 2019 and subsequent to her suspension after she had been told not to contact the student teacher; and that she attempted to evade the no-contact order by having her husband contact the student teacher and attempt to discuss confidential matters with her. The statement of charges also listed four documented complaints about Kipp from students and a parent beginning in September 2018; Kipp had received warnings about these incidents.

As such, we conclude that Kipp's own pleading indicates that her report to the district attorney's office asserting Sunshine Act violations by the Board was not protected speech and, even it had been, that it was not a substantial factor in the decision to suspend and then terminate Kipp. Accordingly, we find the trial court

---

[17] Courts reviewing preliminary objections may consider not only the facts pled in the complaint, but also any documents or exhibits attached to it. *Log Cabin Prop., LP v. Pa. Liquor Control Bd.*, 276 A.3d 862, 869 (Pa. Cmwlth. 2022).

[18] As discussed above in footnote 7, we may consider this exhibit to a prior complaint because it is part of the certified record, its existence is not questioned by any party, it is identified and substantively discussed in the Fifth Amended Complaint, and it forms part of the foundation of Kipp's lawsuit. *See Feldman*, 107 A.3d at 836.

did not err or abuse its discretion in sustaining the District Appellees' preliminary objections in this regard.[19]

3. Section 1983/Reputational Rights[20]

"Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Edinger v. Borough of Portland*, 119 A.3d 1111, 1114 (Pa. Cmwlth. 2015) (quoting *Wis. v. Constantineau*, 400 U.S. 433 (1971)). Reputation alone, however, is insufficient to implicate a constitutionally protected liberty interest. *Id.* (citing *Hill v. Borough of Kutztown*, 455 F.3d 225, 236 (3d Cir. 2006)). This type of claim is a subset of procedural due process implicating the Fourteenth Amendment to the United States Constitution. *Id.* at 1112. The plaintiff must satisfy the "stigma-plus" test by alleging or establishing that the employer created and publicly disseminated a false and defamatory impression about the plaintiff (the "stigma") in connection with actions subjecting the employee to suspension or termination of employment in which the employee has a property right, such as

---

[19] As with Kipp's procedural due process allegations, Appellee Sharp argues separately that she cannot be liable for any First Amendment violations because she held no authority under state law, nor did Kipp's Fifth Amended Complaint allege any facts to that effect. We agree. Kipp's Fifth Amended Complaint described Sharp as a teacher and president of the local teacher's union; she is not alleged to have held any government role or authority at the relevant time. Fifth Amended Complaint at 4.

[20] Kipp's Fifth Amended Complaint cites Article I, Section 1 of the Pennsylvania Constitution, which expressly protects reputational rights. Fifth Amended Complaint at 100 (quoting Pa. Const. Art. I, § 1). However, the arguments presented and cases cited in her brief are limited to reputational rights interests under the United States Constitution. As such, she has waived any claims based on the Pennsylvania Constitution. *See Gun Owners of Am.*, 311 A.3d at 85 (stating that "[w]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived").

tenure (the "plus"). *Hill*, 455 F.3d at 237-39. When such a deprivation occurs, the employee is entitled to a name-clearing hearing. *Id.* at 237. To satisfy the stigma prong of the test, a stigmatizing statement must (1) be made publicly and (2) be false. *Edinger*, 1119 A.3d at 1115. "[T]he allegedly stigmatizing statements must go beyond allegations of professional competence, improper or inadequate performance, dereliction or neglect of duty, or malfeasance; for example, statements that implicate the employee's honesty or "moral turpitude" could satisfy the test. *Id.* at 1115-16.

The trial court's rejection of Kipp's reputational claims is limited to the following: "[Kipp] contends injury to her reputation alone. However, [she] had sufficient opportunity to clear her name at both the *Loudermill* hearing and the Board hearing." Trial Ct. Op., Jan. 15, 2021, at 18. In her brief, Kipp asserts that "false claims" about her violations of the District's harassment policies were "disseminated by the Appellees and spoken or laughed about inappropriately." Kipp Br. at 48. She avers that Appellees' suspensions stigmatized her and deprived her of her property right in her tenured teaching position. *Id.*

The District Appellees respond that Kipp's Fifth Amended Complaint fails to allege that any Appellees made public statements concerning these matters until the April 2019 public Board meeting when the intent to issue a statement of charges was announced in accordance with the *Loudermill* process. District Appellees' Br. at 23-25. The District Appellees add that to that point, the only discipline Kipp had been subject to was the two-day unpaid suspension she served in January 2019 and the paid suspension imposed in February 2019 after the two encounters between Sharp and Kipp; as such, during the relevant period, Kipp was

not subject to the level of discipline that rose to the level of a "stigma-plus" violation, such as termination or suspension without pay. *Id.*

We agree with Appellees. Kipp's Fifth Amended Complaint alleges multiple incidents of "hostility and disrespectful behavior" from various Appellees, beginning after Kipp questioned giving snacks to students during PSSA testing. Fifth Amended Complaint at 13. Kipp also reports several instances where individuals allegedly spoke ill of her, but according to her own pleading, these statements were not made public either on social media or through other channels. *See id.* Read as a whole, the Fifth Amended Complaint implies that the totality of Appellees' actions against Kipp, including her suspensions, satisfied the "stigma plus" test. However, in the absence of specific allegations that statements were made against Kipp that were public, false, and went beyond criticism of her professional competence, her Fifth Amended Complaint fails to state a legally sufficient claim that Appellees have deprived her of her liberty interest in her reputation. Accordingly, we find the trial court did not err or abuse its discretion in sustaining the District Appellees' preliminary objections in this regard.[21]

4. State Law Tort Claims

a. High Public Official Immunity

In Pennsylvania, the common law doctrine of high public official immunity "acts as an absolute bar to protect high public officials from lawsuits

[21] As with Kipp's procedural due process and First Amendment allegations, Appellee Sharp argues separately that she cannot be liable for any violations in this regard because she held no authority under state law, nor did Kipp's Fifth Amended Complaint allege any facts to that effect. We agree. Kipp's Fifth Amended Complaint described Sharp as a teacher and president of the local teachers' union and did not allege that she held any government role or authority at the relevant time. Fifth Amended Complaint at 4.

arising out of actions taken in the course of their official duties and within the scope of their authority." *Doe v. Franklin Cnty.*, 174 A.3d 593, 603 (Pa. 2017) (internal citations omitted). The purpose of high public official immunity is to shield the high public official from liability for the benefit of the public he or she serves. *Id.* Absolute immunity from civil liability for high public officials is a means of removing any inhibition which might otherwise "deprive the public of the best service of its officers and agencies." *Id.* The scope of high public official immunity is broad and "exempts a high public official from all civil suits for damages arising out of false defamatory statements and even from statements or actions motivated by malice, provided the . . . actions are taken in the course of the official's duties or powers and within the scope of his authority[.]" *Id.*

Whether an individual is a high public official for immunity purposes is addressed on a case-by-case basis, considering "the nature of [an official's] duties, the importance of [the] office and particularly whether or not [the official] has policy-making functions." *Doe*, 174 A.3d at 603 n.10. Although policymaking is a significant consideration, it is not dispositive, as this immunity "has in many instances been extended to a wide range of public officials whose policy-making roles were not salient." *Durham v. McElynn*, 772 A.2d 68, 70 (Pa. 2001) (concluding that assistant district attorneys are immune based on their roles in carrying out the functions of the district attorney's office). "Rather, it is the public interest in seeing that the official not be impeded in the performance of important duties that is pivotal." *Id.*

This Court has held that school board members qualify as high public officials due to their statutory duties under Section 5-510 of the School Code of 1949, which include the authority to "adopt and enforce such reasonable rules and

regulations as it may deem necessary and proper, regarding the management of its school affairs and the conduct and deportment of all" employees and students. 24 P.S. § 5-510; *Matta v. Burton*, 721 A.2d 1164, 1166 (Pa. Cmwlth. 1998). We have also held that school superintendents may claim this immunity as long as the actions at issue are within the scope of their duties or powers. *Batgos v. Calloway* (Pa. Cmwlth. No. 1203 C.D. 2021, filed Mar. 15, 2024), slip op. at 12-14, 2024 WL 1131335, at **6-7 (unreported).

Here, the trial court concluded that the Board, Superintendent Saylor, and HR Director Simpson had high public immunity from Kipp's claims for defamation and intentional infliction of emotional distress in light of their various authorities and because they were acting within their duties during the relevant period. Trial Ct. Op., Jan. 15, 2021, at 10-11 & 14-15.

Kipp does not address the trial court's high public official immunity determination, arguing instead that the court wrongly granted the District Appellees governmental and qualified immunity as to her Section 1983 claims – forms of immunity that these Appellees have not claimed in response to Kipp's Fifth Amended Complaint.[22] Kipp Br. at 8, 25-26 & 29-33; District Appellees Preliminary

---

[22] Governmental immunity, which is codified at Sections 8541 and 8542 of the Judicial Code, 42 Pa.C.S. §§ 8541–8542, shields local agencies and governments from state law-based tort liability for damages caused by their actions or their employees' actions in the absence of specific and enumerated exceptions. *See Orange Stones Co. v. City of Reading*, 87 A.3d 1014, 1019 n.2 (Pa. Cmwlth. 2014). To the extent Kipp challenges the District's claim of governmental immunity, which the District raised in its preliminary objections, this Court has held that allegations of defamation are not among the causes of action that defeat governmental immunity. *Alston v. PW-Phila. Weekly*, 980 A.2d 215, 219 (Pa. Cmwlth. 2009).

Qualified immunity, which is codified at Section 8546 of the Judicial Code, 42 Pa.C.S. § 8546, shields individual government officials from personal liability for civil damages arising from actions taken within the scope of their official duties, provided those actions did not violate

Objections to Fifth Amended Complaint, Oct. 6, 2022. The District Appellees assert that Kipp's failure to contest the trial court's high public official immunity determination waived any argument against that conclusion. District Appellees Br. at 13. In the alternative, the District Appellees assert that Kipp has offered no new facts in her Fifth Amended Complaint that would require a different outcome from the trial court's previous immunity determinations. *Id.* at 13-17. Sharp, a teacher and president of the local teachers' union, does not claim any form of immunity. Sharp Br. at 7.

Procedurally, our courts have long recognized a limited exception to the rule against pleading affirmative defenses in preliminary objections and have allowed parties to plead the affirmative defense of immunity as in preliminary objections where the defense is clearly applicable on the face of the complaint. *Hommrich v. Boscola*, 329 A.3d 775, 780 (Pa. Cmwlth. 2025). Here, we may determine the question of immunity for the Board, Saylor, and Simpson from Kipp's Fifth Amended Complaint; accordingly, their assertion of this defense was not improper.

Kipp's Fifth Amended Complaint asserts that the Board members, Saylor, and Simpson defamed her by "informing her colleagues" and the school community that she violated the District's harassment policies when, in her estimation, they knew those complaints were based on unfounded "hearsay gossip." Fifth Amended Complaint at 101-02. She adds that these Appellees further defamed her by accusing her of violating the District's confidentiality policy and retaliating

---

clearly established statutory or federal constitutional rights. *Lancie v. Giles*, 572 A.2d 827, 829 (Pa. Cmwlth. 1990). In light of our conclusion above that Kipp's Section 1983 claims lack legal sufficiency, the question whether any of the individual Appellees may claim qualified immunity is moot.

against the complainants. *Id.* at 104. She alleges that the suspensions imposed upon her and the Board's public announcement after the *Loudermill* hearing that a statement of charges would be issued against her were part of the defamation on its part. *Id.* at 104-05. Kipp's Fifth Amended Complaint adds that the foregoing actions by these Appellees amounted to IIED. *Id.* at 106-09.

As noted in *Matta* and *Batgos*, school board members and school superintendents are entitled to high public official immunity when they act within the scope of their duties and authority. *Matta*, 721 A.2d at 1166; *Batgos*, slip op. at 12-14, 2024 WL 1131335, at **6-7. There is no express or implied allegation in the Fifth Amended Complaint that the Board members or Saylor acted outside of their official duties and authority in investigating the original harassment complaints and subsequent allegations of Kipp's retaliation against the complainants, suspending Kipp as a result of the investigation findings, and announcing the statement of charges, but not its contents, at a public hearing. As such, the trial court did not err in conferring high public official immunity upon the Board members and Saylor, which shielded them from trial and liability on Kipp's defamation and IIED claims.

Our case law has not yet addressed whether a school district's HR director is eligible for high public official immunity. However, "absent statutory classification, the parameters establishing 'high public official' status would be delineated by the judiciary on a case-by-case basis . . ." applying the factors described above. *Doe*, 174 A.3d at 603 n.10. Regarding Simpson, the trial court emphasized her role in addressing, investigating, and determining the viability of harassment complaints in determining that she was entitled to high public official immunity. Trial Ct. Op., Jan. 15, 2021, at 10.

In addressing this issue, we take judicial notice of the District's publicly available Unlawful Harassment policy. *See In re F.B.*, 726 A.2d 361, 366 n.8 (Pa. 1999) (taking notice of school district policy on searches of student property). The HR director investigates every harassment complaint that cannot be informally resolved and must produce a written report that includes any conclusion by the HR director that unlawful harassment has occurred "and a recommendation as to remediation if appropriate." District's Unlawful Harassment Policy at 3. The report is submitted to the superintendent, and if the HR director "concludes that unlawful harassment has occurred, the Superintendent shall recommend appropriate remediation and/or discipline up to and including dismissal." *Id.* "If the Director of Human Resources concludes that no unlawful harassment has occurred, the parties and the Superintendent shall be so notified." *Id.* at 4. The HR Director also addresses appeals if a complainant is unsatisfied with the initial finding. *Id.*

Simpson, as the District's HR Director, appears to have little policy-making authority in this context. In fact, the HR Director's duty is limited to publishing and disseminating the policy rather than creating it. District's Harassment Policy at 2. However, Simpson's role includes not only investigating complaints but also determining in the first instance whether harassment has occurred or not, and according to the policy, that determination is subject to only limited further review, if at all, by the superintendent. In effect, Simpson has discretion in this area that resembles the role of the assistant district attorneys found eligible for high public official immunity in *Durham*, not to mention a degree of quasi-judicial discretion and authority. Even in the absence of policy-making authority, this elevates Simpson's role, in this fact-specific and limited context, to one eligible for this immunity. As such, the trial court did not err in granting

Simpson high public official immunity, along with the Board and Saylor, with regard to Kipp's claims sounding in defamation and intentional infliction of emotional distress.

b. Defamation: Appellees Downs, Harris, Mussett & Sharp

A complaint stating a cause of action for defamation must allege: (1) the defamatory character of the communication; (2) publication of the communication to a third party; (3) that the communication refers to the plaintiff; (4) the third party's understanding of the communication's defamatory character; and (5) injury. *Feldman v. Lafayette Green Condo. Ass'n*, 806 A.2d 497, 500 (Pa. Cmwlth. 2002 (citing 42 Pa.C.S. § 8343). Whether a challenged statement is capable of defamatory meaning is a question of law and we view the statement in its factual context because the key in determining defamatory meaning is the effect the statement would produce on its intended audience. *Id.* A communication is considered defamatory if it tends to harm the reputation of another so as to lower her in the estimation of the community or to deter third persons from associating or dealing with her. *Id.*

Generally, a statement that is merely an expression of the speaker's opinion and is based on "disclosed or assumed nondefamatory facts" is not defamatory. *Feldman*, 806 A.2d at 500. However, if an opinion is based on "undisclosed facts" of a defamatory nature, it may be actionable. *Id.* at 501. In *Feldman*, this Court provided an example of the distinction:

> *Goralski* [*v. Pizzimenti*, 540 A.2d 595 (Pa. Cmwlth. 1988)] is instructive. In *Goralski*, a substitute teacher claimed the school district's use of the term "misconduct" in her termination letter constituted defamation. This letter stated the teacher's frequent absences and abusive language toward another employee was "misconduct."

> The teacher argued that use of the term "misconduct" was defamatory. We disagreed, holding that use of the term "misconduct," was merely an expression of opinion, supported by clearly disclosed facts concerning the teacher's absences and abusive language. Because the term "misconduct" was pure opinion, it was not capable of defamatory meaning and the case was properly dismissed.

Id.

Here, in light of the immunity of the Board, Superintendent Saylor, and HR Director Simpson, the remaining Appellees subject to Kipp's defamation claims are Downs, Mussett, and Harris, the teachers who lodged harassment complaints against her; and Sharp, a teacher and the local teachers' union president, who had several altercations with Kipp during the relevant period. The trial court concluded that Kipp's allegations failed to state with sufficient specificity the contents or context of these Appellees' purportedly defamatory statements, identify the direct audience of those statements, or sufficiently allege that the statements were "published" as required by the elements of defamation. Trial Ct. Op., Jan. 15, 2021, at 12. Kipp maintains that her allegations were sufficient. Kipp Br. at 42 & 46-48. The District Appellees and Sharp respond that the trial court correctly determined that Kipp's allegations lacked the required specificity to support her claim. District Appellees' Br. at 29-30; Sharp Br. at 20. We agree with the District Appellees and Sharp.

In her Fifth Amended Complaint, Kipp asserted that Mussett told school staff that he did not like her; spoke at a union meeting against Kipp's initial grievance being approved for arbitration after it was denied, because he believed she had harassed him, as well as Downs and Harris; and laughed at and mocked Kipp during the relevant period. Fifth Amended Complaint at 20 n.10, 49-50, 108. Kipp also asserted that Harris falsely told other union members that Kipp had harassed

her. *Id.* at 102. Kipp alleged that Downs had filed a false harassment complaint against her, told other teachers about it, and solicited them to join his complaint; and that he laughed at and mocked Kipp during the relevant period. *Id.* at 13, 18-19, 108.

Kipp also asserted that Sharp told other union members that she did not like Kipp and did not want to "deal with her" during union meetings; accused Kipp during a meeting of having something to do with RTKL requests made by an unnamed individual involving Kipp's employment issues that Sharp felt targeted the District during the relevant period; emailed all union members about the requests in a way that Kipp asserted was unnecessary and was intended to embarrass Kipp and make her look bad; and accused Kipp during two union meetings of breaking confidentiality by telling people who filed the harassment complaints against her. Fifth Amended Complaint at 21 n.11, 50-51, 54, 65 & 73. Kipp maintained that what these Appellees allegedly said about her to others in the school community was willful and malicious and "destroyed [her] reputation in the community she lives and teaches in." *Id.* at 105.

Upon review, Kipp's allegations do not sufficiently state a cause of action sounding in defamation against Mussett, Harris, Downs, or Sharp. Clearly, acrimony existed among these parties during the relevant period. However, the statements at issue are all either pure opinions or opinions based on disclosed or known facts as in *Goralski*. For example, Mussett's statement that he did not like Kipp and Sharp's statement during union meetings that she did not like Kipp and did not want to work with her were pure opinions. The statements made by Mussett, Harris, and Downs that Kipp harassed them and retaliated against them for filing complaints against her were opinions based on disclosed or known facts, specifically

that the complaints were made and resulted in the deterioration of these Appellees' relationships with Kipp. Similarly, Sharp's statements to union members regarding the RTKL requests were based on the fact that those requests were made, of which we take judicial notice as the resolution of those requests is a public record.[23] As none of the alleged statements made by these Appellees meets the legal definition of a defamatory communication, the trial court did not err or abuse its discretion in sustaining these Appellees' preliminary objections in this regard.

c. Intentional Infliction of Emotional Distress

The elements of IIED are: (1) a person who by extreme and outrageous conduct (2) intentionally or recklessly causes (3) severe emotional distress to another. *Manley v. Fitzgerald*, 997 A.2d 1235, 1241 (Pa. Cmwlth. 2010). "[M]ere insults, indignities, threats, or annoyances" will not rise to the level of "extreme and outrageous conduct." *McNeal v. City of Easton*, 598 A.2d 638, 641 (Pa. Cmwlth. 1991) (quoting the Restatement (Second) of Torts § 46 (1965)). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Kazatsky v. King David Mem'l Park, Inc.*, 527 A.2d 988, 991 (Pa. 1987) (quoting Restatement (Second) of Torts § 46 comment d (1965)). Instances where this tort has been established are relatively rare and comport with the standard set forth in *Kazatsky*. *See Hoy v.*

---

[23] *See In the Matter of Simon Campbell v. Bellefonte Area Sch. Dist.* (Off. of Open Recs., filed May 17, 2019), 2019 WL 2207893 (requesting, *inter alia*, all emails sent or received by HR Director Simpson to and from teachers, union personnel, and union counsel since October 10, 2017, relating to "(a) the workplace duties, expectations, behaviors or performance of Benner Elementary teacher Lynn Kipp, and/or (b) any complaint or other allegation of workplace wrongdoing made against Mrs. Kipp by any employee or representative of the . . . District").

Angelone, 720 A.2d 745, 754 (Pa. 1998) (collecting cases, including *Banyas v. Lower Bucks Hosp.*, 437 A.2d 1236 (Pa. Super. 1981) (defendants intentionally fabricated records to suggest that plaintiff had killed a third party, which led to plaintiff being indicted for homicide)). A court has the authority to evaluate, on the basis of "outrageousness" and intent, whether a plaintiff can sustain a claim of intentional infliction of emotional distress. *McNeal*, 598 A.2d at 640.

Here, the trial court concluded that, as with Kipp's defamation claims, the Board, Superintendent Saylor, and HR Director Simpson were eligible for high public official immunity against Kipp's IIED claims. Trial Ct. Op., Jan. 15, 2021, at 14. Regarding Sharp, Downs, Mussett, and Harris, the trial court concluded that Kipp failed to "allege sufficient material facts" to support her claims in this regard because neither the individual actions and statements of these Appellees nor the collective effect of those actions and statements rose to the level of "extreme and outrageous conduct." *Id.* at 14-15. Kipp argues that the trial court erred in its evaluation of her allegations. Kipp Br. at 36-38. The individual Appellees support the trial court's determination that none of the conduct at issue rose to the level necessary to support Kipp's allegations. District Appellees Br. at 31; Sharp Br. at 21-22.

Kipp's IIED allegations, based on the same facts she asserted with regard to her defamation allegations, were that the collected statements and actions against her by the individual Appellees, including purportedly false allegations of harassment, retaliation, and turning other teachers and union members against her, were done with the intent to inflict "extreme" emotional distress. Fifth Amended Complaint at 106-09. Kipp maintains that these Appellees' actions resulted in loss of her income when she was ultimately suspended without pay, reduced her job

prospects, caused the loss of union support, and resulted in health issues and medical debt. *Id.* Kipp alleged that Appellees had knowingly "destroyed her life." *Id.* at 108.

For the same reasons discussed above about Kipp's defamation claims, we agree with the trial court that the Board, Saylor, and Simpson are immune from Kipp's IIED claims. *See* Trial Ct. Op., Jan. 15, 2021, at 14. Regarding the remaining Appellees, the conduct and statements Kipp alleges do not rise to the level of extremity and outrageousness necessary to support Kipp's claims. We acknowledge the acrimonious relations between Kipp and these Appellees, as well as Kipp's subjective belief that their actions and statements led directly to her current predicament; however, the factual allegations necessary to support a successful IIED claim present a high bar, and Kipp fails to clear it. As such, the trial court did not err or abuse its discretion in sustaining these Appellees' preliminary objections in this regard.[24]

d. Dismissal of Fifth Amended Complaint with Prejudice

A complaint is properly dismissed with prejudice, that is, without the opportunity for the plaintiff to further amend the complaint, when "leave to amend would be a futile exercise." *Chasan v. Platt*, 244 A.3d 73, 84 (Pa. Cmwlth. 2020).

---

[24] We note that, although Kipp did not allege civil conspiracy against Appellees in a separately enumerated count in her Fifth Amended Complaint, she alleges it generally throughout the Fifth Amended Complaint regarding all her claims. *See, e.g.*, Fifth Amended Complaint at 106 (stating that Saylor, Simpson, Sharp, Downs, Harris, and Mussett conspired to intentionally inflict emotional distress on Kipp by pursuing harassment complaints against her that they knew to be false). Because we uphold the trial court's determination that Kipp failed to state any of her claims with legal sufficiency, her associated civil conspiracy claims are moot. *Morley v. Farnese*, 178 A.3d 919-20 (Pa. Cmwlth. 2018) (stating that if a tort claim is properly dismissed for failure to state a claim, conspiracy cause of action based on the underlying tort claim cannot stand).

Since Kipp filed her initial complaint in January 2020, she has filed multiple amended complaints, several without the trial court's permission or Appellees' consent as required by Civil Procedure Rule 1033(a). Trial Ct. Op., June 23, 2023, at 3-4. As set forth in detail in the factual and procedural section above, the Fifth Amended Complaint is actually the eighth complaint filed by Kipp since January 2020.

The trial court's December 19, 2022, order, which is the subject of this appeal, pointed out Kipp's repeated failure to comply with court orders and rules, as well as her failure to cure her various errors and plead her substantive claims with legal sufficiency despite the multiple opportunities she had taken and been given and the resulting prejudice to Appellees from three years expending time, effort, and legal expenses without a viable complaint against which to defend. Trial Ct. Order, Dec. 19, 2022, at 1-2. Accordingly, the trial court concluded that dismissal with prejudice was warranted. *Id.* at 2. After recounting the entire procedural history in its June 2023 opinion, the trial court reiterated that "to allow any further [a]mended [c]omplaints would be an exercise in futility and unfairly prejudicial to Appellees." Trial Ct. Op., June 23, 2023, at 21. This Court cannot improve on the trial court's presentation, nor can we find fault with its reasoning. As such, the trial court did not err or abuse its discretion in dismissing Kipp's Fifth Amended Complaint with prejudice.

IV. Conclusion

In light of the foregoing, we affirm the trial court's June 19, 2020, order. We vacate the trial court's December 19, 2022, order only to the extent that its dismissal of Kipp's Fifth Amended Complaint was based on lack of compliance with

the Rules of Civil Procedure and otherwise affirm. We also grant Appellees' motions to strike Kipp's reply brief and appendices to the extent that they contain extra-record allegations and evidence.

s/Christine Fizzano Cannon
CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lynn M. Kipp, Appellant	:	
v.	:	
Bellefonte Area School District, Board of School Directors, Michelle Saylor, Michelle Simpson, Kimberly Sharp, Nicolas Downs, Nicole Harris, and Michael Mussett	:	No. 263 C.D. 2023

ORDER

AND NOW, this 7th day of October, 2025, the June 19, 2020, order of the Court of Common Pleas of Centre County (trial court) is AFFIRMED. The trial court's December 19, 2022, order is VACATED to the extent that its dismissal of Kipp's Fifth Amended Complaint was based on lack of compliance with the Rules of Civil Procedure and is otherwise AFFIRMED. Appellees' motions to strike Kipp's reply brief and appendices thereto are GRANTED to the extent that they contain extra-record allegations and evidence.

s/Christine Fizzano Cannon
CHRISTINE FIZZANO CANNON, Judge

Order Exit
10/07/2025

APPENDIX B

Opinion and Order of the Court of Common Pleas of Centre County
Sustaining Preliminary Objections, No. 2019-4310
(January 15, 2021)

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LYNN M. KIPP, Plaintiff, v. BELLEFONTE AREA SCHOOL BOARD, MICHELLE SAYLOR, MICHELLE SIMPSON, And KIMBERLY SHARP, NICOLAS DOWNS, NICOLE HARRIS, MICHAEL MUSSET Defendants,	)	No. 2019-4310

COPY
FILED FOR RECORD
2021 JAN 15 PM 4:34
JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

Attorney for Plaintiff:	*Pro Se*
Attorney for Defendant Kimberly Sharp:	*Matthew R. Cravitz, Esq.*
Attorney for Remaining Defendants:	*Carl P. Beard, Esq.*

OPINION AND ORDER IN RESPONSE TO DEFENDANTS' PRELIMINARY OBJECTIONS

Marshall, J.

Presently before this Court are the Preliminary Objections to Plaintiff's Complaint, Plaintiff's First Amended Complaint, and Plaintiff's Second Amended Complaint filed by the Bellefonte Area School Board, Michelle Saylor, Michelle Simpson, Kimberly Sharp, Nicolas Downs, Nicole Harris, and Michael Musset (hereinafter collectively the "Defendants") by and through their attorneys, Beard Legal Group and Carl P. Beard, Esquire on June 8, 2020. Each party submitted written briefs and oral argument was heard on September 22, 2020. After review of the filings, arguments, and relevant law, the Court determines that Defendants' Preliminary Objections are GRANTED for the reasons set forth hereinafter. Plaintiff's Complaint, First Amended Complaint, and Second Amended Complaint are hereby DISMISSED without prejudice.

☒O ☐RD ☐S

BACKGROUND

This matter comes before the Court with a rather complicated procedural history arising out of a writ of summons filed by Lynn M. Kipp (hereinafter "Plaintiff") on or about December 13, 2019 against the Bellefonte Area School District, Michelle Saylor, Michelle Simpson, Nicolas Downs, Nicole Harris, and Michael Musset. On December 17, 2019, the aforementioned parties were served. On January 9, 2020, Plaintiff filed a Motion to Amend the Complaint, seeking the removal of the Bellefonte Area School District (hereinafter "the District") from the caption and the addition of the Bellefonte Area School Board (hereinafter "the Board") and Kimberly Sharp as new parties to this action. Plaintiff's Motion to Amend the Complaint was granted on January 15, 2020.

Plaintiff filed her Complaint on January 15, 2020 (hereinafter "Complaint"). On January 31, 2020, Plaintiff filed a second Motion to Amend her Complaint. Without the Court's permission or the consent of counsel, Plaintiff filed an amended complaint on February 3, 2020 (hereinafter "First Amended Complaint"). On February 13, 2020, Plaintiff filed a third Motion to Amend. Again, without the Court's permission or the consent of counsel, Plaintiff filed an amended complaint on February 13, 2020 (hereinafter "Second Amended Complaint").

On February 27, 2020, Plaintiff filed both a Motion for Recusal of the Honorable President Judge Pamela Ruest as well as a Motion for Continuance. Shortly thereafter, the Pennsylvania Courts were closed in accordance with the state of emergency presented by COVID-19.[1] Defendants filed Preliminary Objections to Plaintiff's Second Amended Complaint on June 10, 2020. After the June 15th hearing, the Court denied Plaintiff's Motion for Recusal.

[1] On March 19, 2020, the Honorable President Judge Pamela Ruest issued an Administrative Order (CP-14-MD-512-2020) permitting the electronic filing of documents with the Prothonotary via email.

Plaintiff's Motion to Amend her First and Second Amended Complaint was dismissed upon agreement by the parties that the Second Amended Complaint would control.

On June 19, 2020, the Honorable President Judge Pamela Ruest ordered the Defendants to file a brief by July 6, 2020 and ordered Plaintiff to file a brief by July 27, 2020. On July 6, 2020, Defendants filed a Brief in Support of Preliminary Objections to Plaintiff's Second Amended Complaint. On July 24, 2020, the Honorable President Judge Pamela Ruest vacated her June 19th Order and granted Plaintiff's Motion for Recusal. On July 28, 2020, Plaintiff filed a Motion to Vacate Recused Judge's Orders, a Motion to Quash Defendants' Preliminary Objections, and a Motion for a New Hearing for all Motions after February 27, 2020.

Upon reassignment of this case, this Court ordered the Plaintiff to file a brief on or before September 16, 2020. On August 19, 2020, the Court scheduled a hearing for September 22, 2020 to address Plaintiff's Motion to Vacate. On September 2, 2020, Defendants' filed a Response in Opposition to Plaintiff's Motion to Vacate, Quash, and Request a New Hearing. On September 17, 2020, Plaintiff filed a Motion for Time Extension for Brief which was granted on September 22, 2020, extending the deadline to September 30, 2020. On October 1, 2020, Plaintiff filed a Combined Answer in Opposition to Defendants' Preliminary Objections. On November 2, 2020, Plaintiff filed a Response Brief in Opposition of Defendants' Preliminary Objections.

In the instant matter, the controlling Second Amended Complaint arises out of disciplinary action taken by the District against Plaintiff relative to an investigation and finding that Plaintiff violated the District's Unlawful Harassment Policy 448. Plaintiff contends the District's finding constitutes defamation, inflicts intentional emotional distress upon her, and is in violation of her constitutional rights. Defendants deny Plaintiff's allegations.

DISCUSSION

"Preliminary objections may be filed by any party to any pleading." Pa. R. Civ. P. No. 1028. Answers and preliminary objections are among the pleadings allowed by the Pa. R. Civ. P. No. 1017. The grounds for a preliminary injunction are limited to:

> (1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;
> (2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;
> (3) insufficient specificity in a pleading;
> (4) legal insufficiency of a pleading (demurrer);
> (5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
> (6) pendency of a prior action or agreement for alternative dispute resolution;
> (7) failure to exercise or exhaust a statutory remedy; and
> (8) full, complete and adequate non-statutory remedy at law.

Pa. R. Civ. P. No. 1028. To rule on a preliminary objection, the court must accept as true all material facts set forth in the challenged pleading and all inferences reasonably deducible therefrom. *Foster v. UPMC South Side Hosp.*, 2 A.3d 655, 662 (Pa. Super. Ct. 2010).

In the instant matter, Defendants raise twelve (12) preliminary objections to Plaintiff's Second Amended Complaint. Although the Court's dismissal of Plaintiff's Complaint, First Amended Complaint, and Second Amended Complaint render Defendants' Preliminary Objections moot, the Court will address each Preliminary Objection in order.

I. Failure to Conform to Law

Defendants contends Plaintiff's Second Amended Complaint fails to comply with Rule 1028(a)(2) and Rule 1033 of the Pennsylvania Rules of Civil Procedure. Under Rule 1033(a) of the Pennsylvania Rules of Civil Procedure, "[a] party, either by filed consent of the adverse party or by leave of court, may at any time ... amend the pleading." Pa. R. Civ. P. No. 1033(a). This

does not give a party an automatic right to amend. *Id.* Instead, a party must first obtain either consent of the adverse party or leave of court in order to "change the form of action, correct the name of the party, or amend a pleading." Pa. R. Civ. P. No. 1033(b). Leave to amend falls within the sound discretion of the trial court and should not be withheld where there is a reasonable possibility that amendment can be successfully accomplished without prejudice to an adverse party. *Morrison Informatics, Inc. v. Members 1st Fed. Credit Union*, 139 A.3d 1241, 1245 (Pa. 2016); *Bata v. Cent.-Penn Nat'l Bank of Phila..*, 423 Pa. 373, 224 A.2d 174, 182 (Pa. 1966).

As previously discussed, Plaintiff's original Complaint was filed on January 15, 2020. On February 3, 2020, Plaintiff filed her First Amended Complaint. On February 13, 2020, Plaintiff filed her Second Amended Complaint. Although Plaintiff filed Motions to Amend, Plaintiff did not obtain the requisite approval. Even where Plaintiff files a Motion to Amend, Plaintiff is still obligated to obtain either consent of the adverse party or leave of court prior to filing her amended complaint with the court. Therefore, in the event Plaintiff seeks to amend a future complaint, Plaintiff must comply with Rule 1033 of the Pennsylvania Rules of Civil Procedure.

II. Failure to Join School District

Defendants contends Plaintiff's Second Amended Complaint should be dismissed due to Plaintiff's failure to join the District. Defendants assert the District is an indispensable party to this action and therefore Plaintiff's failure to join them deprives this Court of subject matter jurisdiction.

"[A] party is indispensable 'when his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.'" *City of Phila. V. Commonwealth*, 550 A.2d 184, 189 (1988). The failure to join an indispensable party impacts a court's subject matter jurisdiction. *Barren v. Dubas*, 441 A.2d 1315, 1316 (1982) (internal

quotation marks and citations omitted). In determining whether a party is indispensable, it must first be decided 'whether justice can be done in the absence of [the] third party.' *Pa. State. Educ. Ass'n v. Commonwealth*, 50 A.3d 1263, 1277 (Pa. 2012), (*quoting CRY, Inc. v. Mill Serv., Inc.*, 536 Pa. 462, 640 A.2d 372, 375 (Pa. 1994)).

Indispensable parties include school districts. Pennsylvania Rule of Civil Procedure 2102(b) states that "[a]n action may be brought by or against a political subdivision in its name." *Glickstein v. Neshaminy School Dist.*, 1997 WL 660636, *3 (E.D. Pa. Oct. 22, 1997). A "political subdivision" includes "any county, city, borough, incorporated town, township, school district, vocational school district, county institution district or municipal or other local authority." Pa. R. Civ. P. No. 76.

As previously discussed, Plaintiff's original Complaint included the District as a defendant. However, Plaintiff replaced the District with the Board in her First Amended Complaint. In the instant matter, Plaintiff's claims involve alleged constitutional deprivations of Due Process and Free Speech rights stemming from the actions of District's employees taken in accordance to District policy. Thus, the District's interest in this case are so connected to Plaintiff's claims that non-joinder of the District would impair its rights. Accordingly, in the event Plaintiff files a future Complaint, Plaintiff must ensure all indispensable parties are included in the litigation.

III. Preliminary Objections on the basis of failure to exhaust administrative remedies.

Defendants contend the procedural due process claims under Count I and Count II of Plaintiff's Second Amended Complaint must fail due to Plaintiff's failure to fully exhaust her administrative remedies.

The doctrine of exhaustion of administrative remedies requires that a person challenging an administrative decision must first exhaust all adequate and available administrative remedies

prior to seeking relief from the court. *Empire Sanitary Landfill, Inc. v. Com., Dep't of Environmental Resources*, 684 A.2d 1047, 1053 (Pa. 1996). The exhaustion requirement prevents premature judicial intervention in the administrative process and ensures a claim will be addressed by the body with the most expertise. *Lehman v. Pennsylvania State Police*, 576 Pa. 365, 380, 839 A.2d 265, 275 (Pa. 2003).

Under Section 903 of the Public Employees Relations Act, 43 P.S. section 1101.101, *et seq.*, "[a]rbitration of disputes or grievances arising out of the interpretation of the provisions of a collective bargaining agreement is mandatory" and the "final step [of the grievance procedure] shall provide for a binding decision by an arbitrator..." 43 P.S. §1101.903.

In the instant case, Article 8, Section D of the CBA claims the Bellefonte Area Education Association (hereinafter "the Association") may request that a grievance be submitted to arbitration if it cannot be satisfactorily resolved by the Board. At the time Plaintiff filed her Second Amended Complaint, Grievance 1 and Grievance 2 were requested to be submitted to arbitration by the Association while Grievance 3 and Grievance 4 had yet to be assigned arbitration hearing dates. Two months after Plaintiff had initiated this action by writ of summons, Arbitrator Mark Lamont issued his Opinion and Award concerning Grievance 1 and 2 on February 28, 2020. Therefore, Plaintiff initiated this action prior to the completion of the arbitration process. Accordingly, Plaintiff failed to fully exhaust her administrative remedies.

IV. Demurrer

A demurrer is a preliminary objection that argues a pleading which fails to set forth a cause of action upon which relief can be granted is legally insufficient. *Sutton v. Miller*, 592 A.2d 83 (Pa. Super. Ct. 1991); *Lugo v. Farmer's Pride, Inc.*, 967 A.2d 963 (Pa. Super. Ct. 2009). When considering preliminary objections in the nature of a demurrer, all material and relevant

facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true. *Hess v. Fox Rothschild, LLP.*, 925 A.2d 798, 805 (Pa. Super. Ct. 2007). The court is to resolve the issues solely on the basis of the pleadings without considering testimony or other evidence outside the complaint. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa. Super. Ct. 2001). The objection may only be granted when the case is clear and free from doubt. *D'Elia v. Folino*, 933 A.2d 117 (Pa. Super. Ct. 2007). To be free and clear from doubt, the complaint must appear with certainty that the law will not permit recovery by the plaintiff upon the facts averred. *Burgoyne v. Pinecrest Cmty. Ass'n.*, 924 A.2d 675, 680 (Pa. Super. Ct. 2007). Where doubt exists as to whether a demurrer to the complaint should be sustained, it should be resolved in favor of overruling the preliminary objection. *Haun v. Cmty. Health Sys. Inc.*, 14 A.3d 120,123 (Pa. Super. Ct. 2011).

In determining the legal sufficiency of a complaint, courts are presumed to know the law. *Heinley v. Commonwealth*, 621 A.2d 1212, 1215 n.5 (Pa. Commw. Ct. 1993). Thus, it is not necessary for a plaintiff to identify the specific legal theory underlying their complaint, as it is the court's duty to determine the cause of action, if any, based on the facts of the complaint. *Cardenas v. Schober*, 783 A.2d 317, 325 (Pa. Super. Ct. 2001). However, at minimum a complaint must "apprise the defendant of the claim being asserted" and summarize "the essential facts to support the claim." *McShea v. City of Phila.*, 995 A.2d 334, 334 (Pa. 2010). Accordingly, a court must examine the complaint to determine whether it sets forth a cause of action that, if proven, would entitle the plaintiff to relief. *State Farm Mut. Auto. Ins. Co. v. Ware Van Storage*, 953 A.2d 568 (Pa. Super. Ct. 2008).

Defendants raised seven (7) preliminary objections pursuant to Pa. R. Civ. P. No. 1028(a)(4). The Court will address each in order.

1. **Whether Plaintiff's Second Amended Complaint sufficiently establishes actionable defamatory conduct on the part of the Board, Michelle Saylor, and Michelle Simpson.**

Defendants contend Plaintiff's claims for defamation asserted against the Board, Michelle Saylor (hereinafter "Superintendent Saylor") and Michelle Simpson (hereinafter "HR Director Simpson") should be dismissed on the grounds that the Defendants are protected by the doctrine of absolute privilege.

The doctrine of absolute privilege for high public officials has been consistently recognized by Pennsylvanian courts. *Lindner v. Mollan*, 677 A.2d 1194, 1195 (Pa. 1996). Courts have recognized that the doctrine of absolute privilege for high public officials:

> "...is unlimited and exempts a high public official from all civil suits for damages arising out of defamatory statements and even from statements or actions motivated by malice, provided the statements are made or the actions are taken in the course of the official's duties or powers and within the scope of his authority, or as it is sometimes expressed, within his jurisdiction."

Matson v. Margiotti, 88 A.2d 892, 895 (Pa. 1952). The doctrine rests upon the notion that otherwise actionable conduct may escape liability due to the defendant acting "in furtherance of some interest of social importance". *Montgomery v. City of Phila.*, 392 Pa. 178, 181, 140 A.2d 100, 102 (Pa. 1958). While recognizing such protection may come at the expense of uncompensated harm to a plaintiff's reputation, Pennsylvanian courts have found the doctrine necessary "as a means of removing any inhibition which might deprive the public of the best service of its officers and agencies." *Azar v. Ferrari*, 898 A.2d 55, 59 (Pa. Cmwlth Ct. 2006).

The doctrine, however, does not extend to all public officials. *Montgomery*, 392 Pa. at 185, 140 A.2d at 104. Instead, only high-ranking officers are protected under the doctrine for statements or actions made within the scope of their official duties or statements "closely related" to performance of those official duties. . *Lindner v. Mollan*, 677 A.2d 1194, 1195 (Pa.

1996); *see also Mosley v. Observer Pub. Co.*, 629 A.2d 965, 967 (Pa. 1993). The determination of whether a particular public officer is a "high public official" is dependent "on the nature of his duties, the importance of his office, and particularly whether or not he has policy-making functions." *Id.*

Under the Pennsylvania Public School Code of 1949, School Boards may "adopt and enforce such reasonable rules and regulations as it may deem necessary, regarding the management of its school affairs and the conduct and deportment of all...employees during the time they are engaged in their duties to the [D]istrict." 24 P.S. §5-510. Pennsylvania courts have recognized that School Board members qualify as "high public officials" for purposes of the doctrine because it is within the scope of the duties of School Board members to hear employee grievances that have been appealed to the School Board, to discipline teachers, and to seek discharge of professional employees for valid causes pursuant to procedures outlined in the School Code and Pennsylvania law. 24 P.S. §11-1122. Similarly, courts have recognized that school superintendents qualify as high public officials for purposes of the doctrine.

In the instant matter, Plaintiff asserts that Defendants engaged in defamatory conduct by: (1) informing Plaintiff's colleagues of the contested violations of the District's Unlawful Harassment Policy; (2) failing to retract the determination that Plaintiff violated District policy; and (3) claiming Plaintiff retaliated against complainants, alleging unlawful harassment by breaking confidentiality. It is within the scope of Superintendent Saylor's duties to handle disciplinary issues and recommend appropriate remediation. As Human Resources Director and Compliance Officer for the District's Unlawful Harassment Policy, it is within the scope of HR Director Simpson's duties to hear complaints of harassment, determine whether the complaint is substantiated, and recommend remedies. Therefore, the Defendants were engaged in the course

of their official duties, were acting within the scope of their authority, and made statements closely related to their official duties.

Plaintiff further contends Defendants violated Pennsylvania's Right to Know Law. Under Pennsylvania's Right to Know Law, school districts are required to provide access to public records that are not otherwise exempted from disclosure and to respond to the Office of Open Records requests for information and/or documents in the course of any appeal.65 P.S. §67.101 *et seq*. Statements that are false or maliciously made do not negate the doctrine of absolute privilege for high public officials because "any personal or political motive, presence of malice, or intent to do harm is immaterial for purposes of this absolute privilege." *Montgomery*, 140 A.2d at 101 n.1. Therefore, even if the Defendants made statements with the intent to harm Plaintiff, they are still protected under the doctrine of absolute privilege.

Accordingly, the Defendants are high-public officials and thus are protected from actions in defamation.

2. Preliminary Objection in the Nature of a Demurrer to Plaintiff's Claim for Defamation against Defendant Down, Defendant Harris, and Defendant Musset Pursuant to Pa. R. Civ. P. No. 1028(a)(4).

Defendants contend Plaintiff's claim for defamation asserted against Defendant Down, Defendant Harris, and Defendant Musset in Count II should be dismissed, on the grounds that Plaintiff has failed to sufficiently state a cause of action. To sufficiently state a cause of action for defamation, the plaintiff has the burden of proving a defendants:

> (1) [m]ade a defamatory communication; (2) about the plaintiff; (3) that was communicated to a third party; (4) who understood the defamatory meaning of the communication about the plaintiff; (5) where the plaintiff suffered special harm as a result of the communication; and (6) that any privilege invoked by the defendant was

abused.

42 Pa. Cons. Stat. Ann. §8343. A communication is defamatory if it "tends to harm the reputation of another." *Tucker v. Phila. Daily News,* 848 A.2d 113, 124 (Pa. 2004). The determination of whether a communication is defamatory must be viewed in its factual context. *Id.* General, unsubstantial and conclusory allegations fail to make out a cause of action for defamation. *Koral v. Mixon*, No. 1859, 2013 WL 11253542, at *3 (Pa. Super. Oct. 4, 2013). Similarly, expressions of opinion based on disclosed facts are insufficient, no matter how unreasonable or unjustified the plaintiff may consider the remark. *Id.* The harm plaintiff suffered from the defamatory communication must be more than feelings of embarrassment or annoyance. *Tucker*, 848 Pa. A.2d at 124. For harm to be actionable, a plaintiff "must have suffered the kind of harm which has grievously fractured his standing in the community of respectable society". *Id.* The communication must be published by a defendant and specifically attributable to the plaintiff. *Id.* Conclusory allegations that statements were publicly made fail to demonstrate publication of defamatory statements *Foster v. UPMC South Side Hosp.*, 2 A.3d 655, 666 (Pa. Super. Ct. 2010).

In the instant matter, Plaintiff's defamation claim is rooted in general and conclusory allegations that Defendants allegedly informed union members, staff, and the District that Plaintiff had harassed them in violation of District policy. Plaintiff did not allege the contents or context of the allegedly defamatory statement nor did Plaintiff identity any persons to whom the alleged statements were made. Additionally, Plaintiff failed to allege publication. Therefore, Plaintiff failed to state a cause of action in defamation.

3. Preliminary Objections in the Nature of a Demurrer to Plaintiff's Claim for Civil Conspiracy Pursuant to Pa. R. Civ. P. No. 1028(a)(4).

Defendants contend Plaintiff's claim for civil conspiracy contained within Counts I through IV of Plaintiff's Second Amended Complaint should be dismissed because Plaintiff failed to sufficiently state a cause of action. To state a cause of action for civil conspiracy, a complainant must allege: "(1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage." *McKeeman v. Corestates Bank, N.A.*, 751 A.2d 655, 660 (Pa. Supper. Ct. 2000)(citations omitted).

A party asserting a claim of civil conspiracy must allege material facts which will "either directly or inferentially establish elements of conspiracy." *Brown v.* Blaine, 833 A.2d 1166, 1174 (Pa. Commw. Ct. 2003). Malice and intent to injure must be proven. *Thompson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). A civil conspiracy "becomes actionable when some overt act is performed in pursuant of the common purpose or design held by the conspirators and actual damage results." *Baker v. Rangos*, 324 A.2d 498 (Pa. Super. Ct. 1974).

In the instant matter, Plaintiff asserted that Defendants engaged in conspiracies to maliciously prosecute, deny constitutional rights, defame, and inflict emotional distress. In furtherance of her position, Plaintiff asserted that Defendant Downs, Defendant Harris, and Defendant Musset all conspired to deny Plaintiff' procedural due process rights and her right to associate with the union, however, fails to allege any overt acts taken by any of the Defendants to achieve this goal. Accordingly, Plaintiff failed to state a cause of action for civil conspiracy.

4. Preliminary Objection in the Nature of a Demurrer to Counts III and IV (Intentional Infliction of Emotional Distress) Pursuant to Pa. R. Civ. P. No. 1028(a)(4).

Defendants contend Plaintiff's claim of intentional infliction of emotional distress (hereinafter "IIED") contained in Counts III through IV of Plaintiff's Second Amended Complaint should be dismissed because Plaintiff failed to sufficiently state her claim. To state a claim for IIED, a plaintiff must allege extreme and outrageous conduct by a defendant, which intentionally or recklessly caused severe emotional distress. *Hoy v. Angelone*, 720 A.2d 745, 754 (Pa. 1998). The alleged conduct must be "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized society." *Id.* Liability does not extend to "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Restatement (Second) of Torts § 46 cmt. d. It is within the court's discretion to determine whether conduct is outrageous and extreme for purposes of a claim of IIED. *McKeeman*, 751 A.2d 655.

Claims for intentional torts, such as IIED, are barred by the Torts Claims Act from being brought against municipal entities such as a school district. Additionally, high public official immunity applies to claims for IIED. *Feldman v. Hoffman*, 107 A.3d 821, 835 (Pa. Commw. Ct.. 2014).

In the instant matter, Plaintiff contends that: (1) Defendants prevented her from receiving "union protection"; (2) that Superintendent Saylor and HR Director Simpson failed to investigate complaints against Plaintiff; and (3) that Defendants all engaged in defamation and other conspiracies against Plaintiff. However, Plaintiff fails to allege sufficient material facts for any of her claims. Plaintiff contends her email exchange with Superintendent Saylor where she was warned not to communicate with those involved in the underlying harassment complaint

constituted retaliation, however, that cannot reasonably rise to the level of "extreme and outrageous" conduct required for a claim of IIED. Likewise, Plaintiff's allegations that Defendants mocked and laughed at Plaintiff's job situation cannot reasonably rise to the level of "extreme and outrageous" conduct.

Therefore, the Board, Superintendent Saylor, and HR Director Simpson are barred from IIED claims based entirely on actions they took while investigating and/or disciplining Plaintiff for alleged violations of District policy. Plaintiff has also failed to sufficiently allege an IIED claim against the Defendants in their individual capacities.

5. Preliminary Objection in the Nature of a Demurrer to Count I of Plaintiff's Second Amended Complaint Pursuant to Pa. R. Civ. P. No. 1028(a)(4)

Defendants contend Count I of Plaintiff's Second Amended Complaint should be dismissed, because Plaintiff failed to sufficiently assert her Fourteenth and First Amendment claims. Due process is "flexible and calls for such procedural protections as the particular situation demands." *Biliski v. Red Clay Consol. Sch. Dist. Bd. Of Educ.*, 574 F.3d 214, 220 (3d Cir. 2009)(*quoting* Gilbert v. Homar, 520 U.S. 924, 930 (Pa. 1997)). Due process is not always required prior to the deprivation of property. *Id.* The "essential requirements of due process...are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Cleveland Bd of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). Courts have held that "a temporary suspension without pay generally does not require a pre-deprivation hearing" if "the

suspended employee receives a sufficiently prompt post-suspension hearing." *Espinosa v. County of Union*, 212 Fed App'x 146, 155 (3d Cir. 2007).

In the instant matter, Plaintiff contends the Board, Superintendent Saylor, and HR Director Simpson violated her Fourteenth Amendment procedural due process rights by: (1) failing to hold pre-suspension hearings; (2) failing to provide sufficient evidence or names of those who accused Plaintiff of policy violations during the April 18, 2019 *Loudermill* hearing; and (3) failing to provide public notice before a vote in violation of Pennsylvania's Sunshine Act. Within Plaintiff's Second Amended Complaint, Plaintiff acknowledges: eight (8) administrative meetings, multiple summaries given to Plaintiff by HR Director Simpson summarizing the complaints made, multiple communications regarding the complaints between Plaintiff and Defendants, and written notices and responses regarding Plaintiff's suspension. Additionally, Plaintiff acknowledges she attended the *Loudermill* hearing on April 18, 2019. Thus, Plaintiff failed to sufficiently establish a violation of her rights under the Fourteenth Amendment.

Plaintiff contends the District failed to comply with the Pennsylvania Sunshine Act. Under the Pennsylvania Sunshine Act (hereinafter "the Act"), legal challenges must be filed "within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which this chapter was violated." 65 Pa. Cons. Stat. §713. In the instant matter, Plaintiff's Second Amended Complaint references events that occurred more than one (1) year ago. Therefore, Plaintiff did not timely pursue any action under the Act.

Plaintiff further contends that Defendants "willfully and intentionally" denied her the "mutual aid protection" of the union in violation of her First Amendment rights, however, Plaintiff failed to allege material facts evidencing such a claim. To plead a First Amendment retaliation claim, a plaintiff must allege: (1) constitutionally protected conduct; (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action." *Myers et. al. v. City of Wilkes-Barre, PA et al,* 3:18-cv-00042*15 (M.D. Pa. January 15, 2019). Under the "public concern" test, an employee's freedom of association claim which "implicate[s] associational rights in essentially the same way and to the same degree" as the employee's free speech claim."

In the instant matter, Plaintiff's claim does not allege that the Defendants retaliated against her because of her union membership. Instead, Plaintiff claims Superintendent Saylor retaliated against her when warning Plaintiff via email that her attempts at contacting fellow union members regarding the investigation violated District policy and should cease immediately or else Plaintiff could be terminated. Therefore, Plaintiff failed to sufficiently establish a violation of her rights under the First Amendment.

6. Preliminary Objections in the Nature of a Demurrer to Plaintiff's Substantive Due Process Claim in Count II of Plaintiff's Second Amended Complaint.

Defendants contend Plaintiff's substantive due process claim should be dismissed because Plaintiff failed to state facts sufficient to support a cause of action. A claim concerning one's liberty interest in reputation is brought pursuant to procedural due process, not substantive due process.

To plead such a claim, Plaintiff must "show a stigma to [her] reputation plus deprivation of some additional right or interest." *Hill v. Borough of Kutztown*, 445 F.3d 225, 236 (3d. Cir. 2006). Reputation alone is "not an interest sufficient to invoke the procedural protection of the Due Process Clause." *Paul v. Davis*, 424 U.S. 693, 701 (1976). The "right accorded is that of procedural due process, specifically the right to an opportunity to refute the charges and clear one's name." *Pulchaski v. Sch. Dis. Of Springfield*, 161 F. Supp. 2d 395, 406 (E.D. Pa. 2001).

In the instant matter, Plaintiff contends injury to her reputation alone. However, Plaintiff had sufficient opportunity to clear her name at both the *Loudermill* hearing and the Board hearing. Therefore, Plaintiff failed to sufficiently establish a deprivation of her liberty interests under her procedural due process rights.

7. Preliminary Objections in the Nature of a Demurrer to Plaintiff's claim for punitive damages.

Defendants contend Plaintiff's request for punitive damages against the Board, Superintendent Saylor, and HR Director Simpson in their official capacities must be dismissed because punitive damages cannot be assessed against municipalities nor defendants sued in their official capacities. *City of Newport v. Fact Concerts Inc.*, 453 U.S. 247, 171 (1981).Additionally, Defendants contend Plaintiff request for punitive damages against the Defendants in their individual capacities must be dismissed because Plaintiff failed to state facts to support such relief. Under Pennsylvania law, an award of punitive damages is justified only when plaintiff has established that a defendant acted "in an outrageous fashion due to either the defendant's evil motive or his reckless indifference to the rights of others." *Phillips v. Cricket Lighters*, 883 A.2d 439, 445-46 (Pa. 2005).

In the instant matter, Plaintiff failed to allege material facts sufficient to establish that any Defendant acted in such a way that would evidence an "evil motive or reckless indifference" to Plaintiff's rights. Therefore, Plaintiff failed to state a claim for punitive damages.

V. Motion to Strike Scandalous and Impertinent Matters from Plaintiff's Second Amended Complaint.

Defendants contend Plaintiff's Second Amended Complaint contains scandalous and impertinent matters that must be stricken. To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action." *Common Cause/Pennsylvania v. Com.* , 710 A.2d 108, 115 (Pa. Commw. Ct. 1998). When an allegation supports a cause of action pled in the complaint, the allegation will not be stricken as scandalous and impertinent. *Brennan v. Smith*, 299 A.2d 683, 686 (Pa. Commw. Ct. 1972). The Court should strike an impertinent matter sparingly, and only after a party shows an affirmative prejudice from the continued inclusion of the matter within the pleading. *Commonwealth v. Hartford Accident and Indemnity Co.*, 396 A.2d 885, 888 (Pa. Commw. Ct. 1979). If, however, specific allegations are found to be scandalous and immaterial and these allegations tend to cast a derogatory light upon players within the litigation, they should be stricken. *See 710 A.2d* at 115.

Accordingly, in the event Plaintiff seeks to revise and refile her complaint, Plaintiff must ensure that the future pleading contains relevant facts that could not be stricken under Rule 1028(a)(2) for constituting scandalous and impertinent matters. Pa. R. Civ. P. No. 1028(a)(2).

VI. Motion for a More Specific Pleading.

Defendants contend Plaintiff fails to specifically plead all material facts upon which her claims against the Defendants are based. For a pleading to be sufficiently particular it must be "sufficiently clear to enable the [opposing party] to prepare his defense" or "inform the

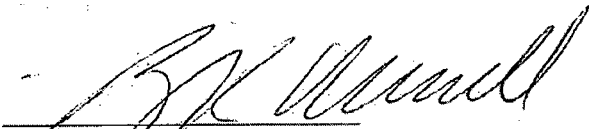
[opposing party] with accuracy and completeness of the specific basis on which recovery is sought so he may know without question upon what grounds to make his defense." *Rambo v. Greene*, 906 A.2d 1232, 1236 (Pa. Super. Ct. 2006)(*citing Ammlung v. City of Chester*, 302 A.2d 491, 498 n. 36 (Pa. Super. Ct. 1973)).

Accordingly, in the event Plaintiff seeks to revise and refile her complaint, Plaintiff shall reference the aforementioned discussion to ensure she has plead each of her claims with sufficient specificity.

ORDER

AND NOW, this 15th day of January, 2021, Defendants' Preliminary Objections are hereby GRANTED. Plaintiff's Complaint, First Amended Complaint, and Second Amended Complaint are hereby DISMISSED without prejudice. Plaintiff shall have thirty (30) days to re-file a Complaint that complies with the Pennsylvania Rules of Court.

BY THE COURT:



Brian K. Marshall, Judge

NOTICE OF ENTRY OF ORDER OR DECREE, PURSUANT TO PA. R.C.P. 236 NOTIFICATION. THIS DOCUMENT HAS BEEN FILED IN THIS CASE.

PROTHONOTARY, CENTRE COUNTY, PA.

DATE: 01/19/2021

APPENDIX C

Order of the Court of Common Pleas of Centre County
Dismissing Fifth Amended Complaint with Prejudice
(December 19, 2022)

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LYNN M. KIPP,	:	
	:	
Plaintiff,	:	No. 2019 – 4310
	:	
v.	:	
	:	
BELLEFONTE AREA SCHOOL DISTRICT,	:	
BELLEFONTE AREA SCHOOL BOARD,	:	
MICHELLE SAYLOR, MICHELLE SIMPSON,	:	
NICOLAS DOWNS, NICOLE HARRIS,	:	
MICHAEL MUSSET	:	
and	:	
KIMBERLY SHARP,	:	
	:	
Defendants.	:	
Attorney for Plaintiff:		*Pro Se*
Attorney for Kimberly Sharp:		*Matthew R. Cravitz, Esq.*
Attorney for All Other Defendants:		*Jennifer L. Dambeck, Esq.*

FILED
2022 DEC 19 PM 4:15
PROTHONOTARY
CENTRE CO. PA

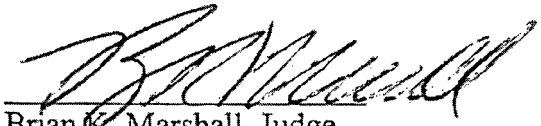
ORDER OF COURT

NOTICE OF ENTRY OF ORDER OR DECREE, PURSUANT TO PA. R.C.P. 236 NOTIFICATION. THIS DOCUMENT HAS BEEN FILED IN THIS CASE.
PROTHONOTARY, CENTRE COUNTY, PA.
DATE: 12·20·2022

AND NOW, this 19th day of December, 2022, following a hearing on December 12, 2022, regarding Defendant Kimberly Sharp's ("Defendant Sharp") and Defendants Bellefonte Area School District, Bellefonte Area School Board, Michelle Saylor, Michelle Simpson, Nicolas Downs, Nicole Harris, and Michael Musset ("B.A.S.D. Defendants") respective Preliminary Objections and Motions to Strike, wherein the Court heard argument from Plaintiff and counsel for Defendant Sharp, and B.A.S.D. Defendants; the Court noting that Plaintiff has been given numerous opportunities to either find and retain counsel or else properly submit an Amended Complaint in conformance with the Court's directives and the Pennsylvania Rules of Civil Procedure, including by granting Plaintiff extensions of time to file a proper Amended Complaint on September 2, 2022, and on September 30, 2022; the Court further observing that Plaintiff's Fifth Amended Complaint patently fails to conform to a number of the rules of Civil

Procedure and of this Court's local filing rules, including but not limited to Pa. R.C.P. No. 1019(a) for being practically unreadable due to being submitted as four (4) scanned pages printed to one (1) single page and for being 117 pages in length; the Court further noting that Plaintiff's earlier Complaints have been repeatedly dismissed for both failure to comport to rules of Court and for legal insufficiency, and the Court being unable to discern any substantive changes in the factual allegations contained within Plaintiff's Fifth Amended Complaint as compared to Plaintiff's previously dismissed Complaints; and after a thorough review of the record and the relevant and applicable law, the Court finding and concluding that Plaintiff has had more than ample opportunity to comply with the Court's directives and the Pennsylvania Rules of Civil Procedure, and that allowing any further extensions of time or subsequent Amended Complaints would be prejudicial to Defendants due to the attorney fees incurred across what is now three (3) years of litigation, during which time Plaintiff has consistently and repeatedly failed to cure the defects in her Complaint and comply with Court directives, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that Defendants' Preliminary Objections are **SUSTAINED,** and that Plaintiff's Fifth Amended Complaint, as well as all claims raised therein, are **DISMISSED** with prejudice.

BY THE COURT:



Brian K. Marshall, Judge

APPENDIX D

Opinions of the Court of Common Pleas of Centre County
Under Pa.R.A.P. 1925(a) (Marshall, J.; Ruest, S.J.)
(June 23, 2023)

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LYNN M. KIPP,	:	
	:	
Plaintiff,	:	263 CD 2023
	:	
v.	:	
	:	
BELLEFONTE AREA SCHOOL DISTRICT,	:	
BELLEFONTE AREA SCHOOL BOARD,	:	Centre County No. 2019 – 4310
MICHELLE SAYLOR, MICHELLE SIMPSON,	:	
NICOLAS DOWNS, NICOLE HARRIS,	:	
MICHAEL MUSSET	:	
and	:	
KIMBERLY SHARP,	:	
	:	
Defendants.	:	
Attorney for Plaintiff:		*Pro Se*
Attorney for Kimberly Sharp:		*Matthew R. Cravitz, Esq.*
Attorney for All Other Defendants:		*Jennifer L. Dambeck, Esq.*

Pa. R.A.P. 1925(a) OPINION

Marshall, J.

Plaintiff/Appellant Lynn M. Kipp ("Appellant") filed a "Notice of Appeal" on March 16, 2023, appealing this Court's Order dated December 19, 2022, sustaining Defendants/Appellees ("Appellees") Preliminary Objections and dismissing Appellant's "Fifth" (5th) Amended Complaint[1] for her repeated failure to comply with the Pennsylvania Rules of Civil Procedure and the directives of this Court.[2] This Court issued an order on March 24, 2023, directing

[1] Appellant captioned said Complaint as her Fourth Amended Complaint, despite the same being her seventh (7th) submission and procedurally having been treated and referred to as her Fifth Amended Complaint. Appellant has repeatedly, continuously, and inexplicably struggled throughout the pendency of this case to comply with the rules of Civil Procedure and the directives of this Court, and has similarly struggled to properly file or caption any of the drafts of her Complaint and its subsequent Amended versions.

[2] In her Notice of Appeal, Appellant mistakenly asserts that the present action was previously consolidated with her separate action to vacate an arbitration award, and that this Court restored her rights to appeal the decisions in both cases nunc pro tunc. *See, e.g., Notice of Appeal to the Commonwealth Court, March 16, 2023* at Centre County Docket No. 2019 – 4310. Appellant insists on continuing this misunderstanding despite the lack of

Appellant to submit a concise statement of errors complained of on appeal, and further extended her deadline to file her concise statement by order dated April 14, 2023. Appellant filed her Statement of Matters Complained of on Appeal on May 23, 2023, raising in essence two (2) allegations of error:

1. Was the Honorable Judge Pamela Ruest unfair or prejudicial in her handling of Appellant's case before her ultimate recusal therefrom;
2. Did this Court act unfairly or prejudicially in dismissing Appellant's cause of action after Appellant failed to comply with the Pennsylvania Rules of Civil Procedure and the directives of this Court despite being afforded numerous opportunities to achieve such compliance across nearly three years of litigation?

PROCEDURAL HISTORY

This matter is wrought with procedural error and improvident filings, as the record will no doubt reflect. For the sake of clarity and ease of navigation, this Court shall briefly summarize the underlying dispute, then provide a more detailed accounting of the three most relevant time periods for the purposes of this appeal.

The underlying dispute in this case involves Appellant's suspension after numerous incidents involving Appellant behaving in what the Bellefonte Area School District and Bellefonte Area School Board deemed to be an inappropriate and harassing manner. Appellant appears to contend that (1) her behavior never rose to the level of unlawful harassment, and (2) that she suffered an abridgment of her due process rights, damage to her personal and professional reputation, financial loss, and mental and physical anguish as a result of her suspension and the actions of Appellees. *See generally, e.g., Appellant's Amended Complaint,*

---

language in any Court Order in support of this misinterpretation, and in spite of this Court's subsequent Orders in stark opposition to such interpretation.

September 22, 2022. While Appellant's own evidentiary exhibits contradict a number of her claims, *see, e.g., Appellant's Amended Complaint, September 22, 2022* at para. 75; *compare with, contra, Appellant's Amended Complaint, Feb. 13, 2020, Ex. 10,* this Court ultimately dismissed Appellant's cause of action for flagrant and repeated failure to conform her pleadings and filings to the Pennsylvania Rules of Civil Procedure and to the directives of this Court, despite the ample opportunity and instruction provided. *See, e.g., Opinion and Order In Response to Defendants' Preliminary Objections, January 15, 2021; Order of Court, September 2, 2022; Order of Court, September 30, 2022.* The procedural history of this case is as follows.

I. December 12, 2019 – July 24, 2020 (Judge Pamela Ruest Presiding)

Appellant initiated this action by filing a praecipe to issue writ on December 12, 2019, and an addendum thereto on December 13, 2019. Appellant also mailed a letter to the Centre County Court Administrator regarding what she purportedly felt to be a potential conflict of interest[3], which this Court filed of record on January 8, 2020.

On December 19, 2019, the Prothonotary of Centre County issued a Rule to file Complaint upon the request of Appellees pursuant to Pa. R.C.P. 1037. On January 8, 2020, Appellant filed a Motion for Extension of Time to file her Complaint, which was granted that same day by the formerly presiding President Judge Pamela Ruest (hereafter "Judge Ruest"). Appellant filed a Motion to Add Verification Statement and a Motion to Change Caption on January 9, 2020, before filing her original Complaint and exhibits on January 15, 2020. Judge Ruest granted both of Appellant's Motions on this same date.

[3] This supposed conflict involved the undersigned Judge having previously worked at a local law office unaffiliated with this case. To the extent a response is deemed necessary, the undersigned Judge was not the first Judge assigned to the case, and has not at any time felt that his prior employment at this unaffiliated law firm in any way jeopardized his ability to remain impartial and render appropriate decisions.

On January 31, 2020, Appellant filed both a Motion to Amend her Complaint and a new Complaint, despite having received neither permission from this Court nor the consent of Appellees. On February 3, 2020, Appellant filed a praecipe for jury trial, a second Motion to Amend her Complaint, and yet another Amended Complaint without permission or consent. Neither preliminary objections nor an answer to Appellant's original complaint or first amended complaint had been filed at this time.

On February 10, 2020, Judge Ruest scheduled a hearing on Appellant's January 31, 2020 Motion to Amend her Complaint. Three days later, on February 13, 2020, Appellant filed yet another Motion to Amend her Complaint, and a third amended complaint, again without permission or consent. On February 21, 2020, Judge Ruest scheduled a hearing on Appellant's February 13, 2020 Motion to Amend her Complaint.

On February 24, 2020, the Appellee School Board filed a Motion to Seal exhibits 4.1 – 4.30, 7.c, 11, and 12 as offered in Appellant's February 3, 2020 amended complaint for a failing to comply with Section 7.0 of the Case Records Public Access Policy of the Unified Justice System of Pennsylvania, and for the inclusion of a confidential investigative report. *See Defs.' Mot. To Seal Pl.'s Exs.* at paras. 3-9.

On February 27, 2020, Appellant filed a Motion for Recusal asking for Judge Ruest to recuse herself due to Judge Ruest having previously represented a third party in a contentious custody dispute between Appellant and said party. Appellant also filed a Motion for Continuance[4], asking that the matter be continued due to an upcoming surgical appointment and to allow Judge Ruest time to consider Appellant's Motion for Recusal.

[4] This Motion for Continuance also marks what would become the first in a long line of flimsy excuses and bald accusations of impropriety and conspiracy against a number of different individuals, including those unrelated to the present matter.. *See Pl.'s Mot. For Continuance, Feb. 27, 2020* at para. 1; *c.f., N.T. Dec. 12, 2022* at 32 – 34

On February 28, 2020, Appellant filed a bizarre motion[5] seeking to bar Attorney Matthew Cravitz from representing Appellee Kimberly Sharp, purportedly due to what she believed to be a conflict of interest and a lack of standing.[6] *See Pl.'s Mot. To Remove Legal Counsel* at 3-4. On March 13, 2020, Appellant filed her response in opposition to Appellee School Board's Motion to Seal Exhibits.[7] On May 18, 2020, Judge Ruest scheduled all outstanding Motions for hearing and argument on June 15, 2020.

On June 10, 2020, Appellee School Board filed twelve (12) preliminary objections to Appellant's February 13, 2020 Amended Complaint (hereafter the "Second Amended Complaint"). On June 11, 2020, Appellee Kimberly Sharp filed nine (9) preliminary objections to Appellant's Complaint, First Amended Complaint, and Second Amended Complaint, all of which were substantially encompassed by Appellee School Board's preliminary objections. *See generally Defs.' Preliminary Objections to Pl.'s Second Amended Complaint; c.f., Def. Sharp's Preliminary Objections to Pl.'s Complaint, First Amended Complaint, and Second Amended Complaint.*

(regarding how her unnamed "out-of-town" attorney had offered to represent her, but she failed to make a decision in a timely fashion resulting in him rescinding his offer).

[5] Appellant in this motion seeks to rely rather confusingly on a provision of the Pennsylvania Public Employee Relations Act concerning the exclusive bargaining power of an elected representative to handle negotiations with an employer regarding matters of pay, hours, terms, and conditions of employment. *See Pl.'s Mot. To Remove Legal Counsel* at para. 3. Despite attempts by opposing counsel, Judge Ruest, and the undersigned Judge to explain to Appellant that Attorney Cravitz is not her employee elected representative and was simply retained by the Bellefonte Area Education Association to represent the association in Appellant's grievance arbitration, Appellant insists on maintaining her misunderstanding.

[6] Appellant in her own motion acknowledged that Attorney Cravitz had never represented her in her personal capacity, and had refused to represent her in her personal capacity on a prior occasion. *Id.* at 13-14.

[7] In said response, Appellant levies a thinly veiled and bald accusation at opposing counsel regarding a supposed computer virus contained within an email attachment. Appellant attempts to use this accusation as an excuse for her inability to properly format and edit her computer documents, and has continuously levied the same baseless accusations and excuses throughout the course of this litigation.

June 15, 2020 Motion Hearing

On June 15, Judge Ruest heard oral argument on Appellant's Motion for Recusal, Appellant's Motion to Remove Legal Counsel, Appellee School Board's Motion to Seal, and Appellant's outstanding motions to amend her complaint. At said hearing, Appellant explained that Judge Ruest had previously represented Appellant's former spouse in Appellant's custody dispute with said former spouse approximately 12 – 13 years prior. *See N.T. June 15, 2020* at 2, 13. Appellant then went on to talk about her problems with a number of other Judges, levied vague and unfounded accusations of bias and judicial impropriety against said judges, and requested assignment to either Judge Katherine Oliver[8] or the undersigned Judge, with a preference for Judge Oliver.[9] *Id.* at 2 – 6.

In response, Appellees respective counsel each indicated that they took no official position on Appellant's Motion for Recusal, but that they were concerned Appellant may have been "picking the judges [she] like[s]." *Id.* at 13-14, 16. Appellant competently defended against this concern by reiterating her understandable discomfort with having a formerly adverse party preside over her case where there are other judges available. *Id.* at 16. Judge Ruest then clarified for the parties that she had formerly represented Appellant's former spouse, but had no memory of either Appellant or her former spouse. *Id.* Judge Ruest then denied the Motion to Recuse, but assured Appellant she would recuse if any point she believed she could no longer be impartial. *Id.* at 17. Appellant, unsatisfied, proceeded to rant about unnamed judges acting against her and

[8] For the sake of clarity, this Court notes here that only Judge Ruest and the undersigned Judge have presided over this matter, despite Appellant's multiple references to other Judges and said judges' respective conduct/reputation throughout her filings and court appearances.

[9] Appellant, unprompted, also went on to discuss everything from her troubles as a pro se plaintiff, her arbitration proceeding, her irritation with having to wait in the prothonotary's office, her requests for various extensions of time, unfounded accusations of the Pennsylvania State Educator's Association (hereafter "PSEA") sending her a computer virus, and her attempts to communicate with the Centre County Court Administrator. N.T. June 15, 2020 at 6 – 12.

her family members and accuse the court administrator of acting against her, even amidst Judge Ruest's attempts to explain how the filing process in Centre County. *Id.* at 18 – 19. Judge Ruest then reiterated her decision to deny the Motion to Recuse a this time, to which Appellant responded that she would be "appealing the matter and pursuing other action." *Id.* at 19.

Appellant next argued on her Motion to Remove Legal Counsel, asserting that Attorney Cravitz should be barred from serving as Appellee Sharp's counsel. *Id.* at 19 – 22. Attorney Cravitz then clarified that he is not, nor has ever held himself out to be, the exclusive representative of either the teacher's union or the bargaining unit referenced by Appellant. *Id.* at 22. Attorney Cravitz then further explained that PSEA represents several local teacher's unions, that PSEA was a client and had requested he represent BAEA in Appellant's unrelated grievance arbitration, and that he had never at any point represented Appellant nor communicated to Appellant that he would or did represent her[10]. *Id.* at 23 – 24. Appellant then responded by accusing Attorney Cravitz's family of conspiring with the arbitrator in grievance dispute, and reiterates her misunderstanding of Attorney Cravitz's role as exclusive representative. *Id.* at 24-30. Attorney Cravitz again attempts to explain to Appellant and this Court that Appellant's reading of the Bellefonte Areas School District's contract with BAEA is incorrect, explaining that the contract itself plainly states that the association itself is the exclusive bargaining representative for employees. *Id.* at 31 – 32.

Judge Ruest then heard argument on Appellee School Board's Motion to Seal Appellant's Exhibits. Appellant initially contested having argument on this Motion due to her purportedly not being prepared; however, this Court notes, as did Judge Ruest at the time of the hearing, that an Order scheduling the Motion for hearing was sent to Appellant, and Appellant had already filed a

[10] Appellant concedes as much through her numerous assertions that Attorney Cravitz refused to act as her legal counsel and telling her that he did not represent her and only represented BAEA. *See, e.g.,*

thorough reply to said Motion. *Id.* at 31 – 38. Accordingly, argument on the Motion to Seal proceeded. Appellees argued that the aforementioned exhibits 4.01 – 4.30 contained confidential and identifiable information regarding students and parents that had been released without consent of the parents, and that the remaining exhibits subject to the motion were the result of the unlawful harassment investigation against Appellant and should be sealed to protect the parties who had filed the complaint from retaliation. *Id.* at 38 – 40. Appellant, in contrast, argued that the information in exhibits 4.01 – 4.30 were not confidential because they were already publicly posted on social media and "liked" by the parents of the children in question, and that exhibits 7.c, 11, and 12 were not being treated as confidential documents by the parties identified therein. *Id.* at 40 – 44. Appellant then further argued that, because her Complaint includes a count for defamation, the public should be able to access the full names of minor children included in her complaint, the full names of coworkers who filed complaints against her for harassment, and the entirety of the Human Resources Director Report.

Finally, the hearing concluded with argument on Appellant's Motions to Amend her complaints. Appellant's argument was, in essence, that she did not know her case had been assigned to a judge at the time of filing her Amended Complaints without leave of Court, and that opposing counsel having not objected to Appellant's request to file an Amended Complaint was effectively a grant of permission. Appellant also contended that the preliminary objections filed by Appellees were patently untimely due to her Third Amended Complaint having been filed on February 13, 2020. Appellees in turn contended that they were not sure whether Appellant's amended complaints were operative or nullities given the lack of any decision on Appellant's motions to amend. *Id.* at 53 – 56. Ultimately, all parties effectively agreed that Appellant's Motions to Amend her Complaint were moot in light of her having filed multiple

Amended Complaints already, and in light of Appellees having filed Preliminary Objections to Appellant's most recent amendment. *Id.* at 52 – 59.

****

On June 19, 2020, Judge Ruest issued an Order denying Appellant's Motion For Recusal and Motion to Remove Legal Counsel, partially granting and partially denying Appellee School Board's Motion to Seal, and dismissing Appellant's Motions to Amend upon agreement of the parties to treat the February 13, 2020 Amended Complaint as the operative complaint. Also on June 19, 2020, Judge Ruest issued briefing schedules in response to Appellees' respective preliminary objections.

On July 6, 2020, Appellees each filed a brief in support of their respective preliminary objections. On July 16, 2020, Appellee imperfectly filed a Notice of Appeal which, to this Court's understanding, was never served on Judge Ruest and was not received and was not docketed by the Commonwealth Court nor this Court until January 19, 2021, after such appeal had been perfected. *See Tr. Ct. Statement Pursuant to Pa. R.A.P. 1925, January 22, 2021.* On July 24, 2020, Judge Ruest on her own motion issued an order vacating only her denial of Appellant's Motion to Recuse, and this matter was assigned to the undersigned Judge.

II. July 28, 2020 – January 15, 2021 (Complaint Dismissed Without Prejudice)

On July 28, 2020, after receiving notice of Judge Ruest's recusal, and despite Appellant's apparent attempt to take an interlocutory appeal, Appellant filed a Motion to Vacate Judge Ruest's substantive decisions regarding Appellees Motion to Seal and her own Motion to Remove Legal Counsel. This Court scheduled the matter for argument on September 22, 2020.

September 22, 2020 Motion to Vacate/Preliminary Objections Hearing

At the September 22, 2020 hearing, this Court heard argument on Appellant's Motion to Vacate Judge Ruest's decisions, and on Appellees' respective preliminary objections. While this Court instructed Appellant to first make argument on the Motion to Vacate, Appellant was consistently either unable or unwilling to stay on topic even after multiple redirections. *See generally, e.g., N.T. September 22, 2020* at 1 – 13. In essence, Appellant argued that the Motion to Seal and Motion to Remove Legal Counsel were improperly decided, and that she did not agree to having her Motion to Amend Complaint dismissed and her Amended Complaint treated as the operative complaint. *Id.* Appellant also argued that the preliminary objections filed by Appellees were untimely, and that Judge Ruest's decision to schedule a deadline for briefs in support thereto and in opposition thereto was improper given such untimeliness. *Id.* at 11-13.

Appellees first contested Appellant's contention of untimeliness, explaining the series of events and communications between the parties and Judge Ruest regarding Appellees intention to delay filing preliminary objections until this Court decided which of Appellant's numerous filings would serve as the operative complaint. *Id.* at 15 – 17, 19. Appellees also contended that Appellant suffered no prejudice to her ability to prosecute her claim as a result of their delayed filing. *Id.* Appellee School Board also addressed the Motion to Seal, reiterating their position that (1) the full name of the student included in Appellant's Exhibit 4.30 was improper in light of governing case law, FERPA, and the Public Access Policy confidentiality guidelines, and (2) that the other sealed exhibits were properly sealed given the compelling government interest in protecting the parties who file unlawful harassment complaints from potential retaliation. *Id.* at 17-18. Finally, Attorney Cravitz explained again[11] that he is not the exclusive representative of

[11] This explanation follows more of Appellant's baseless accusations and excuses, ranging from having been sent a "Trojan" computer virus by non-party PSEA, unsubstantiated claims of Microsoft Office Software and printer

Appellant's bargaining unit, that he does not engage in bargaining for PSEA or BAEA, and that he has never represented Appellant in any legal matter. *Id.* at 30-31.

This Court then heard lengthy argument from Appellant on a variety of issues, including several matters not pertinent to Appellant's Motion to Vacate or the Preliminary Objections. *See generally, id.* at 34 – 37. Attorney Beard then responded by clearly and concisely explaining the relevant terms of Appellant's collective bargaining agreement and the relevant statutory provisions regarding teachers' right to unionize. *Id.* at 47 – 49.

Next, this Court heard argument from Appellee School Board regarding their preliminary objections. *Id.* at 50 – 59. After a brief recess, Appellant was given the opportunity to respond, with yet another reminder as to the subject matter her argument should pertain to. *Id.* at 59 – 60. Appellant then proceeded to argue the merits of her case rather than the permissibility of her February 13, 2020 Amended Complaint for more than thirty (30) minutes before concluding with a request to have one of her witnesses deposed. *See generally, id.* at 60 – 83.

This Court next heard argument from Attorney Cravitz regarding Appellee Sharp's Preliminary Objections. *Id.* at 83 – 86. Appellant was again provided with both an opportunity to respond and a reminder to make legal argument rather than arguing her beliefs on the underlying facts of her case. *Id.* at 87. Fortunately, Appellant seemed somewhat receptive to this particular reminder and proceeded to present some legal argument regarding the appropriateness of dismissing her complaint with prejudice and her perception of Appellees untimeliness in filing their preliminary objections, albeit interwoven with a few tangential and immaterial topics. *See*

---

software malfunctioning only as to her own filings and documents, her purported confusion as to whether a Judge had been assigned to her case despite her receipt of various court orders, needless argument with Attorney Cravitz having taken no stance on Appellee School Board's Motion to Seal, and an oral Motion for Discovery all culminating again in Appellant's insistence that Attorney Cravitz should be barred from representing Appellee Sharp due to his having represented Appellant's teacher's union in Appellant's grievance arbitration proceedings with said union. *See generally N.T. September 22, 2020* at 20 – 30.

Id. at 87 – 90. Finally, the Court concluded the proceedings by granting Appellant an extension of time by which to file a brief in response to Appellees' respective preliminary objections. *Id.* at 93.

****

On September 30, 2020, Appellant filed her Combined Answer in Opposition to Appellees preliminary objections, which was docketed the following day on October 1, 2020. Appellant then filed a Motion for Stay on October 2, 2020, requesting additional time to file a more responsive brief and additional oral argument due to the same underlying health concerns she referenced in her previous Motions and at the September 22, 2020 hearing. This Court denied Appellant's Motion on October 6, 2020, but would ultimately grant her a further extension of time by which to file a response brief to Appellees' preliminary objections during a hearing[12] on October 19, 2020.

On October 30, 2020, Appellant filed her Brief in Opposition to Appellees' respective preliminary objections, which was docketed on November 2, 2020. On December 19, 2022, this Court denied Appellant's Motion to Vacate Judge Ruest's Orders in a separate matter. However, due to administrative oversight, Appellant's Motion to Vacate in this matter was never officially ruled upon. On January 15, 2021, this Court issued an Opinion and Order dismissing Appellant's February 13, 2020 Amended Complaint without prejudice and granting her thirty (30) days by which to file an Amended Complaint in compliance with this Court's rulings.

[12] This October 19, 2020 hearing was held to address matters on Appellant's separate arbitration appeal. However, Appellant opened by requesting additional time to file a response in this action, which the Court granted in light of her *pro se* status and reported health concerns.

III. January 19, 2021 – Present (Interlocutory Appeals and Final Dismissal)

On January 19, 2021, this Court received a docketing statement from the Commonwealth Court regarding Appellant's imperfectly filed interlocutory appeal of Judge Ruest's Orders. This Court issued a Statement Pursuant to Pa. R.A.P. 1925 on January 22, 2021, respectfully suggesting that Appellant's appeal was an impermissible interlocutory appeal.

On February 8, 2021, Appellant filed a Motion for Extension of Time, requesting an additional three – four (3 – 4) week extension of time to file her new Amended Complaint. *See Appellant's Mot. For Extension of Time, February 8, 2021* at para. 1. This Court issued an Order on February 11, 2021, scheduling Appellant's Motion for a hearing to be held February 24, 2021. Appellees both filed responses to Appellant's Motion for Extension of Time on February 12, 2021, requesting that any extension be limited to, at most, two weeks.

On February 16, 2021, Appellant filed two (2) duplicative Amended Complaints and four (4) duplicative Notices of Appeal to this Court's January 15, 2021 Opinion and Order. On February 17, 2021, Appellant filed a Motion for Reconsideration asking the Court to deem her Brief in Opposition to Appellees Preliminary Objections filed[13], and to Quash Appellees preliminary objections. Appellee School Board filed Preliminary Objections to Appellant's new Amended Complaint, a Response in Opposition to Appellant's Motion for Reconsideration, and a Motion for Enforcement and Sanctions regarding Appellant's inclusion of non-redacted exhibits that were previously sealed by Judge Ruest's Order dated June 19, 2020.

On February 22, 2021, this Court scheduled Appellant's Motion for Reconsideration for a hearing to be held February 24, 2021. Also on February 22, 2021, Appellee Sharp filed her Response in Opposition to Appellant's Motion for Reconsideration. On February 23, 2021,

[13] This Court notes that it had already regarded Appellant's brief as having been timely filed. *See Tr. Ct. Opinion and Order, Jan. 15, 2021* at 3.

Appellee Sharp filed Preliminary Objections to Appellant's new Amended Complaints, and this Court scheduled Appellee School Board's Motion for Enforcement and Sanctions for hearing on February 24, 2021.

On February 24, 2021, a discussion was held regarding Appellant's two pending appeals of interlocutory orders. Accordingly, this Court issued an Order staying all proceedings until such time as the Commonwealth Court issued a ruling on said appeals. *See Tr. Ct. Order, Feb. 24, 2021.*

On March 26, 2021, this Court issued Orders pursuant to 1925(b) in response to each of Appellant's Notices of Appeal. Appellant filed a single Statement of Matters Complained of on Appeal on April 16, 2021. This Court issued an Opinion in response thereto on May 3, 2021.

On September 2, 2021, the Commonwealth Court issued a Memorandum and Order quashing and dismissing Appellant's appeal of Judge Ruest's Order dated June 19, 2020 due to said Order being interlocutory rather than final or collateral. *See Centre County Docket No. 2019-4310, Commonwealth Court Memorandum and Order docketed Sep. 10, 2021.* On October 5, 2021, the Commonwealth Court then denied Appellant's Motion for Reconsideration. *See Centre County Docket No. 2019-4310, Commonwealth Court Memorandum and Order docketed October 7, 2021.* On October 28, 2021, the Commonwealth Court then dismissed Appellant's duplicative appeals of this Court's Opinion and Order dated January 15, 2021, for failure to respond to a Notice of Defect. However, the Commonwealth Court also stated that it would have dismissed Appellant's appeal even if she had responded, for the same reasons stated in its previous Memoranda and Orders. *See Centre County Docket No. 2019-4310, Commonwealth Court Memorandum and Order docketed November 1, 2021* at 2.

On November 24, 2021, Appellant filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, which was thereafter denied on March 10, 2022. Appellant then filed an Application for Reconsideration with the Pennsylvania Supreme Court, which was denied on May 5, 2022.

Appellees each filed a Praecipe for Argument on May 26, 2022, after Appellant failed to file her "Fourth" Amended Complaint within the 20 days allotted by this Court's February 24, 2021 Order. On June 10, 2022, Appellant filed her Response to these Praecipes, requesting the Court hold a status conference to address where this case would pick up procedurally. Appellant also filed a Motion for Clarification and Continued Stay on June 14, 2022, seeking clarification on when the aforementioned 20 day period should commence. Appellee School Board filed a Response in Opposition to said Motion, also on June 14, 2022. This Court initially scheduled the matter for argument to be held July 29, 2022, but rescheduled the hearing to August 25, 2022 at the request of both Appellees.

Appellee Sharp filed her Response in Opposition to Appellant's Motion for Clarification on July 1, 2022. On July 22, 2022, Appellant filed a Request for Subpoenas.

On August 4, 2022, Appellant again filed an Amended Complaint without leave of court or permission of the opposing party. On August 15, Appellee School Board filed an Emergency Motion to Quash Subpoenas and for a Protective Order following Appellant's alleged failure to provide adequate written notice of her intent to subpoena various witnesses and for an improper attempt to avoid having to pay for the production of transcripts. Appellee Sharp filed an analogous Motion to Quash and for Protective Order on August 16, 2022. On August 23, 2022, Jackie Sherwood, a court reporter for Warren County, Pennsylvania and one of the persons subpoenaed by Appellant, filed her own Motion to Quash and for a Protective Order, arguing

that Appellant's subpoena was an attempt to get around having to pay for the production of transcripts.

On August 24, 2022, Appellant filed her Response in Opposition to these Motions to Quash, effectively admitting to the allegations contained within said Motions. *See Appellant's Response in Opposition, August 24, 2022* at 1 – 5. After review, this Court issued an Order granting the Motions to Quash and for Protective Orders.

At the hearing on August 25, 2022, this Court heard argument regarding the Motion for Clarification and Continued Stay. On September 2, 2022, this Court issued an Opinion and Order denying Appellant's Motion for Continued Stay but granting Appellant an additional twenty (20) days from the date of said Opinion and Order to submit another Amended Complaint in compliance with this Court's Opinion and Order dated January 15, 2021 and with the Pennsylvania Rules of Civil Procedure. This Order also informed Appellant that a failure to do so would result in the dismissal of her action with prejudice. *See Tr. Ct. Opinion and Order, Sep. 2, 2022* at para. 3.

On September 22, 2022, Appellant submitted what would henceforth be referred to as her "Fourth Amended Complaint," notwithstanding the amount of Amended Complaints actually filed, and filed separately her exhibits to said complaint. On Friday, September 23, 2022, Appellant filed an Emergency Motion for Resubmission, asking for a very brief extension of time to file a Fifth Amended Complaint due to technological difficulties. *See Appellant's Emergency Mot. For Resubmission* at p. 7. Appellant's Motion yet again levied thinly veiled and baseless accusations of technological interference at Appellees and/or unnamed entities. *See, e.g., id.* at para. 20. Appellee School Board filed a Response in Opposition to Appellant's Emergency Motion on September 29, 2022.

As this Court did not receive Appellant's Emergency Motion until the following Monday, and in reliance on Appellant's assurances that her corrections could be completed in a very short timeframe, this Court granted Appellant's Emergency Motion over the objections of Appellee School Board, directing Appellant to file her appropriately Amended Complaint by October 3, 2022.

On October 3, 2022, Appellant filed what would thereafter be referred to as her Fifth Amended Complaint, the final complaint submitted in this matter. Despite the numerous opportunities and extensions of time by which to correct any deficiencies, Appellant submitted an illegible document with four (4) pages of averments on a single piece of paper. Appellant filed a Motion for Relief on October 4, 2022, baldly accusing opposing counsel of "hacking" her computer and of unspecified bad faith actions. Appellees filed Preliminary Objections to Appellant's Fifth Amended Complaint on October 6, 2022, and October 7, 2022, arguing that the Fifth Amended Complaint patently failed to conform to both this Court's January 15, 2021 Opinion and Order and a multitude of the Pennsylvania Rules of Civil Procedure.

On November 7, 2022, Appellee School Board submitted a brief in support of its preliminary objections. On November 15, 2022, Appellee Sharp submitted her brief in support of her preliminary objections. On December 1, 2022, Appellant submitted briefs in opposition to each of Appellees preliminary objections.

On December 6, 2022, Appellant again attempted to subpoena a number of witnesses for the preliminary objection hearing, and to improperly subpoena a transcript rather than submitting the appropriate transcript request and accompanying payment. Appellees and Warren County Court Reporter Jackie Sherwood renewed their Motions to Quash and for Protective Orders on December 7, 2022. This Court granted the Motions to Quash on December 9, 2022.

On December 12, 2022, this Court heard argument on Appellees preliminary objections to Appellant's Fifth Amended Complaint and Appellee School Board's Motion to Strike Appellant's Reply Brief.

On December 19, 2022, this Court dismissed Appellant's Fifth Amended Complaint with prejudice for failure to conform with this Court's directives and the Pennsylvania Rules of Civil Procedure. Appellant filed a Motion for Reconsideration on January 3, 2023, which this Court denied on January 13, 2022. On or around January 17, 2023, Appellant served a Notice of Appeal on this Court and Appellees via email; however, this Notice of Appeal was never filed or docketed, presumably due to an error with the Centre County electronic filing software. Also on January 17, 2023, Appellant filed a Petition to proceed *In Forma Pauperis* and a praecipe to request transcripts. On February 6, 2023, this Court scheduled a hearing regarding Appellant's petition and praecipe for March 2, 2023.

At said hearing, the Court was made aware by Attorney Dambeck for Appellee School Board that the Notice of Appeal had not been properly filed. However, Appellant was able to provide proof that she had emailed her Notice of Appeal to the appropriate email address for electronic filing purposes with Centre County. The Court then held an on the record discussion with the Centre County Prothonotary, confirming that the email address Appellant had submitted to was indeed correct and that the security software may have incorrectly flagged and quarantined Appellant's Notice of Appeal. Accordingly, this Court issued an Order on March 6, 2023, granting her permission to resubmit her Notice of Appeal *nunc pro tunc* and holding Appellant's I.F.P. petition and request for transcripts in abeyance pending such submission.

On March 15, 2023, Appellant filed a Motion for Corrections and Clarification which, in essence, asked this Court to hold a hearing clarifying the messy procedural history of this case

prior to Appellant's appeal. On March 16, 2023, Appellant filed her Notice of Appeal and a Motion for Recusal and Rehearing, arguing that the undersigned Judge should recuse himself and grant rehearing due to Appellant contemplating a theoretical future dispute with Attorney Julia Rater[14] regarding said Attorney's judicial campaign. *See Mot. For Recusal and Rehearing, March 16, 2023* at para. 38.

On March 17, 2023, Appellee School Board filed a Motion to Strike references to Centre County Docket No. 2020-1332, a separate case that was never consolidated by this Court. Appellee Sharp filed a Motion to Join Appellee School Board's Motion to Strike on March 21, 2023. On March 24, 2023, this Court issued four Orders: (1) an Order granting Appellant's I.F.P. petition and request for transcripts and directing Appellant to file a Concise Statement; (2) an Order granting Appellees Motions to Strike; (3) an Order denying Appellant's Motion for Recusal and Rehearing; and (4) an Order denying Appellant's Motion for Clarification and Correction.

On April 13, 2023, Appellant filed an Emergency Motion for Transcripts and Time Extension for the purposes of completing her Concise Statement, which this Court granted on April 14, 2023. On April 24, 2023, Appellant filed a Notice of Additional Appeal[15] regarding this Court's Orders dated March 24, 2023. On May 23, 2023, Appellant submitted her Concise Statement of Matters Complained of on Appeal, but failed to properly serve a copy thereof to this Court pursuant to Pa. R.A.P. 1925.

---

[14] Attorney Julia Rater served as the campaign chair during the undersigned Judge's election campaign.
[15] This Notice of Additional Appeal was docketed by the Commonwealth Court as a separate appeal. Accordingly, this Court will issue a separate Opinion in response to this Notice of Additional Appeal.

DISCUSSION

Appellant's first contention of error is that Judge Ruest's handling of her case prior to her recusal was prejudicial and improper. Pursuant to Pa. R.A.P. 1925(a), the undersigned Judge has requested that Judge Ruest submit her own opinion regarding the decisions made during this timeframe. To the extent Appellant argues this Court erred in refusing to vacate said Orders, this Court respectfully suggests that the matters were not decided in error for the reasons set forth in this Court's 1925(a) Opinion dated May 3, 2021.

Moreover, the Pennsylvania Supreme Court has stated that "[a] trial court always has the authority to reconsider its own judgment . . . The question of whether or not to exercise that authority is left to the sound discretion of the trial court." *Moore v. Moore*, 535 Pa. 18, 25, 634 A.2d 163, 167 (1993). Under the coordinate jurisdiction rule, judges sitting in the same court on the same case cannot overrule each other. *Okkerse v. Howe*, 521 Pa. 509, 516, 556 A.2d 827, 831 (1992). A transferee trial judge may not alter the resolution of a legal question previously decided by a transferor trial judge. *Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326, 1311 (1995) *see also Riccio v. American Republic Ins. Co.*, 550 Pa. 254, 705 A.2d 422, 425 (1997). This rule is based on a policy of ensuring a degree of pretrial finality so that judicial economy and efficiency can be maintained. *Starr*, 664 A.2d at 1331. Departure from the rule is allowed under "exceptional circumstances" where: (1) there has been a change in the controlling law; (2) there has been a substantial change in the facts or evidence; or (3) where the prior holding was clearly erroneous and would create manifest injustice if followed. *Id.* at 1332.

In the instant matter, this Court respectfully suggests that Appellant failed to provide evidence sufficient to establish any such "exceptional circumstance" surrounding Judge Ruest's June 19, 2020 and July 20, 2020 Orders.

As to Appellant's second contention of error, this Court relies on its Opinion and Order dated January 15, 2021, as well as its Orders dated February 5, 2021, September 2, 2022, and December 19, 2022, and respectfully suggests that no other opinion is needed at this time. Moreover, this Court reiterates that Appellant has been given numerous opportunities to comply with the Pennsylvania Rules of Civil Procedure and with this Court's directives, and that she has willfully failed to do so at every stage of this litigation. This Court respectfully suggests that to allow any further Amended Complaints would be an exercise in futility and unfairly prejudicial to Appellees.

CONCLUSION

Wherefore, for all the foregoing reasons, this Court respectfully requests that the Commonwealth Court affirm its decision.

BY THE COURT:

Date: June 23, 2023

Brian K. Marshall, Judge

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

LYNN M. KIPP,	:	
Plaintiff,	:	263 CD 2023
v.	:	
BELLEFONTE AREA SCHOOL DISTRICT, BELLEFONTE AREA SCHOOL BOARD, MICHELLE SAYLOR, MICHELLE SIMPSON, NICOLAS DOWNS, NICOLE HARRIS, MICHAEL MUSSET and KIMBERLY SHARP,	:	Centre County No. 2019 – 4310
Defendants.	:	
Attorney for Plaintiff:		*Pro Se*
Attorney for Kimberly Sharp:		*Matthew R. Cravitz, Esq.*
Attorney for All Other Defendants:		*Jennifer L. Dambeck, Esq.*

Pa. R.A.P. 1925(a) OPINION

Ruest, S.J.

Plaintiff/Appellant Lynn Kipp (hereafter "Appellant") filed a Notice of Appeal in the above-captioned matter on March 16, 2023, and a Concise Statement of Matters Complained of on Appeal (hereafter the "Concise Statement") on May 23, 2023. The undersigned Judge recused herself from this matter on July 24, 2020, and this case was reassigned to Judge Brian Marshall. As the Concise Statement also references decisions made by the undersigned Judge prior to her recusal, Judge Marshall requested that the undersigned Judge tailor an Opinion addressing said decisions.

Appellant's Concise Statement raises essentially one (1) allegation of error as it pertains to decisions made by the undersigned Judge:

Did the Orders issued by the undersigned Judge on June 19, 2020, and July 24, 2020 constitute reversible error or an abuse of discretion?

BACKGROUND

As Judge Marshall has authored an Opinion with a more detailed procedural history, the undersigned Judge will instead provide an abridged history more closely related to the allegations of error referenced above.

This matter arises out of an employment conflict between Appellant and Appellees Bellefonte Area School District, Bellefonte Area School Board, Michelle Saylor, Michelle Simpson, Nicolas Downs, Nicole Harris, and Michael Musset (hereafter "Appellee School District") and Appellee Kimberly Sharp (hereafter "Appellee Sharp") regarding disciplinary action taken against Appellant after a number of alleged misconducts.

On January 15, 2020, Appellant filed her first Complaint. Appellant then filed both a Motion to Amend Complaint on January 31, 2020, and an Amended Complaint. This Amended Complaint was filed without leave of Court and without the consent of Appellees. On February 3, 2020, Appellant filed another Motion to Amend her Complaint, along with a second Amended Complaint, again without leave of Court or the consent of Appellees.

On February 10, 2020, the undersigned Judge scheduled Appellant's February 3, 2020 Motion to Amend Complaint for a hearing to be held March 4, 2020. On February 13, 2020, Appellant filed a third Motion to Amend her Complaint, and a third Amended Complaint, again without leave of court or the consent of Appellees. On February 21, 2020, the undersigned Judge scheduled Appellant's third Motion to Amend for a hearing on March 4, 2020.

On February 24, 2020, Appellee School District filed a Motion to Seal certain exhibits Appellant had attached to her Amended Complaints. On February 27, 2020, Appellant filed a

Motion for Recusal, asking for the undersigned Judge to recuse herself due to the same having previously served as counsel for Appellant's ex-husband in an unrelated custody dispute, and a Motion for Continuance of the March 4, 2020 hearing. Unfortunately, the record does not reflect whether an Order was ever issued with regards to this Motion for Continuance. However, the undersigned Judge believes that the continuance was ultimately granted, as there is similarly no indication of any hearing in this matter having occurred on March 4, 2020.

On February 28, 2020, Appellant filed a Motion to Remove Legal Counsel, incorrectly asserting that Attorney Matthew Cravitz (hereafter "Attorney Cravitz") was the exclusive representative of her bargaining unit and, therefore, could not represent Appellee Sharp in these proceedings.

On March 13, 2020, Appellant filed her Answer to Appellee School District's Motion to Seal. Shortly thereafter, the undersigned Judge issued an Emergency Closure due to the COVID-19 Pandemic, and this matter recommenced on or around May 18, 2020.

On May 18, 2020, the undersigned Judge scheduled all outstanding Motions for argument to be held June 15, 2020. Appellees filed Preliminary Objections to Appellant's Complaint and her subsequent Amended Complaints on June 10, 2020, and June 11, 2020. This Court then heard argument on June 15, 2020, regarding Appellant's Motion for Recusal, Appellant's Motion to Remove Legal Counsel, Appellant's Motions to Amend her Complaint, and Appellee School District's Motion to Seal.

At said hearing, Appellant explained that the undersigned Judge had previously represented her ex-husband in a custody dispute. *See N.T. June 15, 2020* at 1 – 19. The undersigned Judge then informed Appellant that the undersigned Judge felt she could proceed

impartially as she had no recollection of Appellant or her husband, but that she would revisit the matter if her opinion changed. *Id.* at 16 – 17.

Appellant next argued on her Motion to Remove Legal Counsel, asserting that Attorney Cravitz should be barred from serving as Appellee Sharp's counsel. *Id.* at 19 – 22. Attorney Cravitz then clarified that he is not, nor has ever held himself out to be, the exclusive representative of either the teacher's union or the bargaining unit referenced by Appellant. *Id.* at 22. Attorney Cravitz then further explained that the Pennsylvania State Education Association (hereafter "PSEA") represents several local teacher's unions, that PSEA was a client and had requested he represent the Bellefonte Area Education Association (hereafter "BAEA") in Appellant's unrelated grievance arbitration, and that he had never at any point represented Appellant nor communicated to Appellant that he would or did represent her. *Id.* at 23 – 24. Attorney Cravitz further attempted to explain to Appellant that Appellant's reading of the Bellefonte Areas School District's contract with BAEA is incorrect, explaining that the contract plainly states that the association itself is the exclusive bargaining representative for employees. *Id.* at 31 – 32.

The undersigned Judge then heard argument on Appellee School Board's Motion to Seal Appellant's Exhibits. Appellant initially contested having argument on this Motion due to her purportedly not being prepared; however, the undersigned Judge reminded her that an Order scheduling the Motion for hearing was sent to Appellant, and Appellant had already filed a thorough reply to said Motion. *Id.* at 31 – 38. Accordingly, argument on the Motion to Seal proceeded. Appellees argued that the aforementioned exhibits 4.01 – 4.30 contained confidential and identifiable information regarding students and parents that had been released without consent of the parents, and that the remaining exhibits subject to the motion were the result of the

unlawful harassment investigation against Appellant and should be sealed to protect the parties who had filed the complaint from retaliation. *Id.* at 38 – 40. Appellant, in contrast, argued that the information in exhibits 4.01 – 4.30 was not confidential because the contents of said exhibits had already been publicly posted on social media and "liked" by the parents of the children in question, and that exhibits 7.c, 11, and 12 were not being treated as confidential documents by the parties identified therein. *Id.* at 40 – 44. Appellant then further argued that, because her Complaint includes a count for defamation, the public should be able to access the full names of minor children included in her complaint, the full names of coworkers who filed complaints against her for harassment, and the entirety of the Human Resources Director Report.

Finally, the hearing concluded with argument on Appellant's Motions to Amend her complaints. Appellant's argument was, in essence, that she did not know her case had been assigned to a judge at the time of filing her Amended Complaints without leave of Court, and that opposing counsel having not objected to Appellant's request to file an Amended Complaint was effectively a grant of permission. Appellant also contended that the preliminary objections filed by Appellees were patently untimely due to her Third Amended Complaint having been filed on February 13, 2020. Appellees in turn contended that they were not sure whether Appellant's amended complaints were operative or nullities given the lack of any decision on Appellant's motions to amend. *Id.* at 53 – 56.

On June 19, 2020, the undersigned Judge issued an Order denying Appellant's Motion For Recusal and Motion to Remove Legal Counsel, partially granting and partially denying Appellee School Board's Motion to Seal, and dismissing Appellant's Motions to Amend upon agreement of the parties to treat the February 13, 2020 Amended Complaint as the operative complaint.

On July 24, 2020, after further consideration, the undersigned Judge then decided that, notwithstanding her ability to remain impartial, continuing to preside over Appellant's case may give the appearance of impropriety. Accordingly, the undersigned Judge issued an Order vacating her prior decision regarding Appellant's Motion to Recuse.

DISCUSSION

Appellant's primary contention as it pertains to the undersigned Judge seems to be the propriety of the Order dated June 19, 2020. As said Order had four (4) provisions, the undersigned Judge shall address each in turn.

1. Appellant's Motion For Recusal

As stated above, the undersigned Judge maintains her position that she was fully capable of remaining impartial, and that she had no personal feelings regarding Appellant that could have influenced her decisions. However, after more consideration, the undersigned Judge recognized that continuing to preside over the matter may give the appearance of impropriety, and promptly vacated her prior decision and recused herself from the matter. However, to the extent the Commonwealth Court does find that her initial denial of Appellant's Motion was in error, the undersigned Judge respectfully suggests that such error was harmless for the forthcoming reasons.

2. Appellant's Motion to Remove Legal Counsel

As stated above and set forth more thoroughly in Judge Marshall's accompanying 1925(a) opinion, Attorney Matthew Cravitz has never represented Appellant in any proceeding, and is not the exclusive representative of Appellant's bargaining unit. Wherefore, the undersigned Judge respectfully suggests that this decision was not in error.

3. Appellee School District's Motion to Seal

The undersigned Judge's Order dated June 19, 2020, only seals Appellant's Exhibits 4.30, 7.c, 11, and 12, and provides an explanation for why each was sealed. The undersigned Judge relies on the reasoning contained within this Order, and respectfully submits that no other explanation is needed at this time.

4. Appellant's Motion to Amend Complaint

After review of the Transcript from the June 15, 2020 hearing, the undersigned Judge concedes that Appellant did not consent to the treating of her Motion to Amend as moot and wished for the Court to hold a hearing on said Motion. However, because Appellant's desired outcome from this contemplated hearing would have been for the February 13, 2020 Amended Complaint to be treated as the operative complaint, and because Appellees consented to its being treated as such, the undersigned Judge respectfully suggests that any error associated with the phrasing of this provision was harmless.

CONCLUSION

Wherefore, for all the foregoing reasons, the undersigned Judge humbly requests that the Commonwealth Court affirm her decisions.

BY THE COURT:

Date: June 23, 2023

Pamela Ruest, Judge

APPENDIX E

Order of the Court of Common Pleas of Centre County
on Motion to Seal (Public Version)
(June 19, 2020)

IN THE COURT OF COMMON PLEAS, CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

LYNN M. KIPP,
Plaintiff
v.

BELLEFONTE AREA SCHOOL BOARD, MICHELLE SAYLOR, MICHELLE SIMPSON, AND KIMBERLY SHARP, NICOLAS DOWNS, NICOLE HARRIS, MICHAEL MUSSETT,

Defendants

No. 2019-4310

FILED FOR RECORD
2020 JUN 19 PM 3:16
PROTHONOTARY
CENTRE COUNTY, PA

Attorney for Plaintiff: *Pro Se*
Attorney for Defendant Kimberly Sharp: *Matthew R. Cravitz, Esq.*
Attorney for Remaining Defendants: *Carl P. Beard, Esq.*

ORDER

AND NOW, this 19th day of June, 2020, after hearing, it is ORDERED as follows:

1. Plaintiff's Motion for Recusal is DENIED.
2. Plaintiff's Motion to Remove Legal Counsel is DENIED.
3. Defendant's Motion to Seal Plaintiff's Exhibits is DENIED as to Exhibits 4.1 through 4.29. Said Motion is GRANTED as to Exhibit 4.30 which refers to a student's full name, as well as Exhibits 7.c., 11 and 12 which are part of a Confidential Investigative Report. These documents will therefore be sealed.
4. Plaintiff's Motion to Amend Complaint is dismissed upon agreement, since a First and Second Amended Complaint have been filed.

BY THE COURT:

Pamela A. Ruest, President Judge

NOTICE OF ENTRY OF ORDER OR DECREE, PURSUANT TO PA. R.C.P. 236 NOTIFICATION. THIS DOCUMENT HAS BEEN FILED IN THIS CASE.
PROTHONOTARY, CENTRE COUNTY, PA.
DATE: 06/23/2020

APPENDIX F

Order of the Supreme Court of Pennsylvania
Denying Petition for Allowance of Appeal, No. 2 MAL 2026
(July 28, 2026)

Supreme Court of Pennsylvania
Middle District

Amy Dreibelbis, Esq.
Deputy Prothonotary
Elizabeth E. Zisk
Chief Clerk

601 Commonwealth Avenue, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106-2575
(717) 787-6181
Fax:(717) 787-1549
www.pacourts.us

July 28, 2026

Jeremy S. Breon
Prothonotary & Clerk of Courts
Centre County Courthouse
102 South Allegheny Street
Bellefonte, PA 16823

RE: Lynn M. Kipp, Petitioner
v.
Bellefonte Area School District, Board of School Directors, Michelle Saylor, Michelle Simpson, Kimberly Sharp, Nicolas Downs, Nicole Harris, and Michael Mussett, Respondents
No. 2 MAL 2026

Trial Court Docket No: 19-4310

Commonwealth Docket Number: 263 CD 2023

Appeal Docket No:

Date Petition for Allowance of Appeal Filed: January 2, 2026
Disposition: Order Denying Petition for Allowance of Appeal
Disposition Date: July 28, 2026

Reargument/Reconsideration Disposition:
Reargument/Reconsideration Disposition Date:

/hms

FILED FOR RECORD
2026 AUG 21 PM12:20
JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LYNN M. KIPP, Petitioner v. BELLEFONTE AREA SCHOOL DISTRICT, BOARD OF SCHOOL DIRECTORS, MICHELLE SAYLOR, MICHELLE SIMPSON, KIMBERLY SHARP, NICOLAS DOWNS, NICOLE HARRIS, AND MICHAEL MUSSETT, Respondents	:	No. 2 MAL 2026 Petition for Allowance of Appeal from the Order of the Commonwealth Court

ORDER

PER CURIAM

AND NOW, this 28th day of July, 2026, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 07/28/2026

Attest: Elizabeth Zisk
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX G

Order of the Commonwealth Court of Pennsylvania
Denying Application for Reargument, No. 263 C.D. 2023
(December 3, 2025)

Note to Appendix G

The Commonwealth Court's December 3, 2025 order denying Petitioner's application for reargument in No. 263 C.D. 2023 is not reproduced. The record is no longer available at the Commonwealth Court, and the order was not filed on the trial court docket, Court of Common Pleas of Centre County No. 2019-4310.

APPENDIX H

Superintendent's Letter Imposing Second Suspension
(Two Days Without Pay) (Fifth Am. Compl. Ex. 20a)
(January 18, 2019)

Note to Appendix H

This letter imposed Petitioner's second suspension, with new accusations and additional consequences, eight months after she was first notified of the Finding and her first suspension (May 31, 2018). It was handed to her on January 18, 2019, about four hours after her union notified her that her first grievance had been approved for arbitration. The two-day unpaid suspension was served days later, on January 23–24, 2019, without any opportunity to be heard on the letter's contents; questions about the letter were refused at the meeting.

Bellefonte Area School District
318 North Allegheny Street
Bellefonte, PA 16823
Telephone: (814) 355-4814

Michelle Saylor Ed. D., Superintendent
Tammie Burnaford, Assistant Superintendent
Kenneth G. Bean, Jr., Director of Fiscal Affairs

January 18, 2019

Mrs. Lynn Kipp
745 Thomas Street
State College, PA 16803

Re: Two (2) day suspension without pay

Dear Mrs. Kipp:

This letter will confirm discussions on May 31, 2018, wherein you were initially advised that you would be receiving a three (3) day suspension without pay in regard to documented evidence of a continued behavior within Benner Elementary School that demonstrates that you engaged in inappropriate conduct or exercised poor professional judgment in regard to your interactions with your professional peers.

The following was discussed with you and Mr. Lehmier on May 31, 2018 by Michelle Simpson.

On or about April 19, 2018, the District received a Complaint from your professional peers within Benner Elementary School. Several bargaining unit members complained that over a several year period of time there has been a degradation of the positive work environment at the school through consistent threatening behavior not limited to verbal altercations.

This is based upon several instances that occurred during the 2017-2018 school year. One such incident occurred on or about April 9, 2018 wherein you and three coworkers arrived at Principal Kris Vancas's office. The purpose of the meeting was to discuss the way snacks should be handled for the PSSAs. Shortly after the Principal had advised all of those in attendance that he was willing to discuss the issue, you alleged that fellow staff members had been ganging up on you as it relates to the issue of snack administration during the PSSAs. Both you and a coworker had an exchange over the issue and the Principal directed you both to stop. The Principal attempted to intervene. He stood up out of his chair and requested both you and your coworker to stop. Your coworker stopped at the first request; however you continued speaking in a loud voice. The Building Principal requested two more times for you to stop before you finally stopped speaking. This created a very tense and awkward meeting and demonstrated your failure to adhere to a legitimate supervisory directive of Mr. Vancas.

Another incident occurred on April 30, 2018, wherein it is reported you made accusations about another fourth grade teacher. During that fourth grade level teacher meeting, you made two

Exhibit
App. 107

comments relative to the fellow teacher asking group members to the effect of "Did you see that? Did you see what she just did?" It needs to be noted that group members did not understand the context of the statement and it created a disruption to the meeting. Those interviewed reported an uncomfortable environment. At least one group member reported feeling obligated to apologize for your verbal outburst and behavior on behalf of the grade level group.

At the conclusion of this investigation, Michelle Simpson had an opportunity to meet with you and Mr. Lehmier and advised you of the results of her investigation which involved her speaking with you and other teachers within the building and the district. The ultimate finding in the case was that you have continued to create an atmosphere that was not conducive to a professional or collaborative work environment at Benner Elementary School and in District-level meetings.

Ultimately, a recommendation for a three (3) day suspension without pay was shared with you. I have reflected on that recommendation and have decided to reduce that to a two (2) day suspension without pay.

The conclusion of the investigation demonstrated that there was a continuation of behavior that was inappropriate and/or unprofessional. This was in spite of a previously issued written warning to you in 2013, numerous meetings with the Principal, Kris Vancas, and a meeting with union representation with a plan to improve behavior through various strategies.

During the course of the investigation, we had occasion to review various instances and documentation dating back as far as the 2012-2013 school year.

On March 7, 2013, the Building Principal had occasion to issue you a written warning. According to the written reprimand, an incident occurred on February 15, 2013 between you and another employee. According to the information, at the time you engaged in a verbal altercation in the faculty lounge that proceeded into the hallway. Your conduct and actions caused two teachers each to open their classroom doors to check on the disturbance. You requested another teacher to cover your classroom who sought assistance from a building aide. You then discussed the conflict with the same teacher in the hallway. Your students overheard parts of this discussion and sensed that something was wrong. According to Principal Vancas, your actions caused a disruption to the educational environment and showed a lack of professionalism. Mr. Vancas outlined that the letter to you should serve as a written warning and that any future acts of unprofessionalism may result in further disciplinary action.

After the written warning there were additional issues requiring meetings with you and Principal Kris Vancas. There was also a meeting with Union Representatives and yourself with a plan to improve behavior through various strategies.

Numerous instances have occurred since that point in time leading up to the incident on April 9, 2018, when you were told by the Building Principal to "stop." Despite that directive, you continued to argue the point after the Principal had instructed you to stop talking.

The following issues were considered in making a decision as it relates to a recommendation on disciplinary action. After your written warning during the second school term of the 2012-2013 school year, Principal Vancas during the 2013-2014 school year received two (2) documented complaints from parents when issues arose. Principal Vancas had to deal with those issues. After the third incident in March 2014, Principal Vancas arranged a meeting with Association Representatives regarding complaints from four parents, a volunteer and two student teachers

regarding your behavior. The meeting resulted in the sharing of strategies with you to improve building student/parent relationships. You were also offered a PDE endorsed Administration Toolkit for Classroom Management focusing specifically on Module 3 and 5.

During the 2015-2016 school year there were four (4) instances reported. During October to November 2015 two parents' complaints were received and had to be addressed by Principal Vancas. In December 2015 a paraeducator came forward and reported mistreatment of a student that needed to be addressed by the Principal.

On December 17, 2015, you barged into a fellow teacher's classroom interrupted and became confrontational about a staff holiday get together. You were asked to leave the room immediately however you would not leave the room. That teacher exited her classroom and reported the incident to the Principal. Once again, the Principal addressed this issue with you.

Subsequently, in January 2016, parent and student concerns surfaced about you singling out students, making them "feel stupid," creating "anxiety," "making student cry and students afraid to tell anyone about it." This had been reported by the School Counselor, once again prompting the Building Principal to investigate and address these issues with you.

In the early part of the 2017-2018 school year, there was a verbal altercation between you and staff member regarding you entering absences and substitute coverage. Once again Principal Vancas had to investigate and address this issue with you.

All of these incidents were a precursor to your conduct and actions in April 2018.

Based upon the prior written reprimand and approximately 7 issues that needed to be addressed with you after the issuance of the written warning, I felt that a two (2) day suspension without pay is appropriate.

Due to these ongoing issues, specifically your interactions with students and coworkers, it is recommended that you participate in the following activities to assist in coping strategies to deal with conflict resolution:

- PSEA Conflict Resolution Training
- Three mandatory EAP visits.

As Superintendent of Schools I am hopeful that the PSEA Conflict Resolution Training will help to minimize future conflicts within the building.

Accordingly, I will be suspending you for the following two (2) days without pay on January 23 and January 24, 2019.

I am hopeful that the above action coupled with the PSEA Conflict Resolution Training component will help to address these issues.

Please be aware that your suspension without pay is undertaken pursuant to Section 1122 of the Public School Code of 1949, as amended, based upon persistent negligence, persistent and willful violations of the school laws as well as willful neglect of duties.

Please be aware that should there be any like or similar infractions as resulted in the issuance of this two (2) day suspension without pay or other issues that have been addressed with you by Principal Vancas over the last several years, it may result in further disciplinary action up.

I would also like to draw your attention to the Code of Professional Practice and Conduct for Educator that provides in section 235.4(b)(7) as follows:

> (7) Professional educators shall exhibit acceptable and professional language and communication skills. Their verbal and written communications with parents, students and staff shall reflect sensitivity to the fundamental human rights of dignity, privacy and respect.

I trust you understand the seriousness of this matter and will take this opportunity to improve.

Sincerely,

Michelle Saylor

Dr. Michelle Saylor
Superintendent

Cc: Personnel File

Letter Received by:
I do not agree with what is written.

Lynn M Kipp — 1/18/19
Lynn Kipp — Date

Witness — 1/18/19
Witness — Date

APPENDIX I

Petitioner's Written Response to the
Second Suspension Letter (Fifth Am. Compl. Ex. 20b)
(January 24, 2019)

Note to Appendix I

Petitioner's written response, submitted with Grievance #2, to the January 18, 2019 letter imposing her second suspension (App. H). It records that she was told the letter was "not to be questioned today," and that the suspension was served days later without an opportunity to be heard on the letter's contents.

Lynn Kipp
745 Thomas Street
State College, PA 16803

VIA EMAIL

Michelle Saylor
Superintendent
Bellefonte Area School District
318 North Allegheny Street
Bellefonte, PA 16823

January 24, 2019

Re: January 18, 2019 Meeting & Letter Titled: "Two (2) day suspension without pay"

Dear Dr. Saylor,

I apologize for crying at our meeting on January 18, 2019 when I was given your letter of suspension, but my sense of injustice is high. This letter is a response to your verbal offer that I write a response to be attached to your letter and added to my employee file.

Before I respond to the events of that day, I would like to express my sincere gratitude for my most recent "distinguished" evaluation for the 2017-2018 school year that was approved and submitted into PA-ETEP. It is my fourth consecutive year of being rated a distinguished teacher in the Bellefonte Area School District, and to be considered distinguished by Mr. Vancas and you means a great deal to me.

If I sound legalistic in this correspondence, please do not read it as personal. It is only because you mentioned that the letter given to me on Friday (to be placed in my employee file) was drafted by a lawyer acting on behalf of the school district, that I feel as if I need to write back to that legal author with a letter to also be placed in my employee file. You have always supported me in my teaching career, and my sense is that you do not, in your heart, support the injustice that is occurring as a result of a flawed Human Resources report dated May 30, 2018. I believe significant legal errors have been made by Mrs. Simpson in Human Resources, but instead of correcting those legal errors, the school district's counsel has, to date, only compounded them.

While this unfortunate reality now needs to be handled in a more officious tone throughout this and other communications, I did want you to know that I remain the committed teacher and employee I have always been, and I do not intend to allow anything about this legal situation impact the quality of the working relationship we have always had. I greatly admire you, and my greatest hope is that you will continue to use your voice to advocate for me to help bring about a speedy resolution to this matter. With that said, I now turn to the more officious side of things given that I assume you will need to give this correspondence to the district's attorney handling this matter.

Exhibit
20 b

I. REPRESENTATION & CLARIFYING THE LINES OF COMMUNICATION

Article 8, B.2 of the collective bargaining agreement between the district and the union reads:

> "A grievant may represent him or herself at all stages of the grievance procedure, **or** may be represented by the Association. **If a grievant is not represented by the Association,** the Association shall have the right to be present and to state its view, with witnesses if necessary, at all stages."

Words of a contract, like words of a statute, cannot be rendered superfluous. Courts are not to interpret a statute in a way that renders sections of the statute superfluous. 1 Pa. C.S. §1921(a); *Holland v. Marcy*, 584 Pa. 195, 883 A.2d 449 (2005). A professional employee of the Bellefonte Area School District may represent himself/herself through grievance Levels 1 through 4 (in accordance with the rights of the union as stated above) – and then, at step Level 5 can be represented by the association/union (assuming the grievant is approved within internal union procedures for such representation at Level 5). This is the process that has been followed regarding the grievance that I initiated in June 2018. I have represented myself for Levels 1 through 4 with consultation from a personal lawyer (Amy Marshall - who is no longer representing me on this matter, therefore, no further communication should be sent to her), along with PSEA playing a supporting role and being present in the grievance-related meetings that it has a right to be present for.

Now that I have been approved within my union for step Level 5 arbitration, the representation of me, per Article 8, B.2 is about to change (i.e. the word "or" in Article 8, B.2 is not superfluous). PSEA attorney, Anne Leete is the attorney assigned by PSEA to handle arbitration. I have acted on my own behalf at all stages up through Level 4, and despite this fact, the district's legal counsel has refused to communicate directly with me or copy me on any and all correspondence. To be clear, when I, or any member of the association, makes a choice to represent oneself at any level of a grievance, during that time it is proper and necessary for the district's legal counsel to contact the individual representing him or herself. Whereas, when I , or any member of the association, has chosen to be represented by the Association at any step, such as at Level 5 arbitration, then it would be proper for the district's legal counsel to contact the Association's legal counsel, which currently is, Anne Leete.

In terms of the new grievance I am filing today (attached as a separate file named: Kipp New Grievance Jan. 24.pdf) all parties are hereby put on notice that pursuant to Article 8, B.2, I plan to, once again, exercise my right to represent myself through at least the conclusion of Level 4 of the grievance steps, with witnesses from the Grievance Committee and the Association as stated under Article 8, B.1 & B.2 of the Collective Bargaining Agreement. I am reserving my right to seek union representation at Level 5 arbitration if needed. I will also copy the union on all appropriate correspondence that the union has its rights preserved under Article 8.

II. THIS RESPONSE LETTER IS TO BE ACCEPTED AND READ *IN PARI MATERIA* WITH MY NEW GRIEVANCE FILED TODAY

The contents of this communication sent via e-mail attachment should be read and construed *in pari materia* with my new grievance which is also sent via e-mail attachment on the same e-mail submission. There are cross-over legal issues that make it important for the district to construe both e-mail attachments *in pari materia*.

III. THIS COMMUNICATION IS IN RESPONSE TO THE VERBAL OFFER MADE AT THE 1-18-19 MEETING

On Wednesday, January 16, 2019 I received an email from Superintendent Dr. Saylor (herein referred to as "Superintendent Saylor", stating that I would need to attend a meeting at 1:15pm on Friday, January 18, 2019. No advance notice was given as to what exactly the meeting was about, but I was informed in this email that three (3) other administrators would be present, and I was "invited to bring an association/building representative" if I chose. Those in attendance beyond Superintendent Saylor and myself were:

- Mrs. Michelle Simpson, Director of Human Resources
- Mrs. Tammie Burnaford, Assistant Superintendent
- Mr. Kristopher Vancas, Principal, Benner Elementary
- Mrs. Elizabeth Whitehead — ESL Teacher (attended as my union representative)

I am hereby copying three (3) of the four (4) individuals in attendance[1] who were witness to the fact that Superintendent Saylor handed me a suspension letter, and I was verbally informed by her of three things:

(i) It was expected that I would serve two (2) suspension days on Wednesday, January 23, 2019 and Thursday. January 24, 2019 – which I am currently doing.
(ii) I was not to ask questions about the contents of the suspension letter at that time.
(iii) I could write a response to the suspension decision letter, and my written response would be attached to go into my employee file.

In essence, I was being informed at this meeting of a disciplinary decision made by Superintendent Saylor in front of three (3) other administrators just four (4) hours after receiving a letter from PSEA regional director that I made it through the arbitration approval process, and PSEA was forwarding my grievance to arbitration (Level 5). Any questions that my union representative or I asked about the disciplinary reasons outlined in the letter were met with responses from Superintendent Saylor, Mrs. Simpson and Mr. Vancas such as:

- "The letter is not to be questioned today"
- "The language in the letter is written by the attorney so you can write a response to the letter to put in your file,"
- "Now is not the time to discuss this."

The verbal offer to write a response to the contents of the suspension letter was made at least three separate times in response to my questions to the administrators at that meeting.

---

[1] I am not comfortable copying Mrs. Simpson on this letter for fear of retaliation.

If this January 18, 2019 meeting by Superintendent Saylor was intended to be part of the grievance that I had initiated in June 2018, then the district would be willfully ignoring the procedures specified in Article 8 of the Collective Bargaining Agreement. The steps in the contract do not specify moving from a Step/Level Five back down to Step/Level Three so that the Level Three decision-maker (Superintendent Saylor) can perform a do-over ahead of a pending Level 5 arbitration. Unless the district is willing to argue that it is entitled to violate Article 8 of the contract, then the district has initiated a **second** disciplinary action against me on January 18, 2019 – just one day after submitting a rating of "distinguished" on PA-ETEP for the fourth consecutive year.

IV. FACTS & TIMELINE

- On January 17, 2019, my employee rating of "distinguished" that was signed by Mr. Kris Vancas on January 7, 2019 for the 2017-2018 school year was approved and submitted on PA-ETEP. Attachment A.

- On April 19, 2018 one "Report Form for Complaints of Unlawful Harassment (448. Attachment)" was received and signed by Human Resources Director Michelle Simpson. Attachment B.

  The Complainant used "Report Form for Policy 448" that they were advised to use despite that this report form is found on the district website under the Board Policy for Professional Employees regarding Policy 448 Unlawful Harassment. While the complainant(s) were advised to use this report form, the complainants were not accusing me of violating any federal mandates, statues, and laws regarding unlawful harassment as defined by Board Policy 448.

- On May 30, 2018, following an investigation, Mrs. Simpson typed and signed a "Report of Complaint on Unlawful Harassment" (hereinafter, the **"Simpson Report"**), that she sent to the Superintendent, Dr. Saylor, which she signed that same day. The findings in this report state that I violated the school district's three (3) unlawful harassment policies:

  - Policy 248 Unlawful Harassment (Section 200 Pupils)
  - Policy 448 Unlawful Harassment (Section 400 Professional Employees)
  - Policy 548 Unlawful Harassment (Section 500 Support Employees)

  All three policies have their own associated complaint forms: Report Form for Policy 248, Report Form for Policy 448, and Report Form for Policy 548, which are available on the school district's website via the Boarddocs platform.

  The Simpson Report does not cite any other Board policy, state, or federal regulation or law. The alleged wrongdoings in the original complaint received by Mrs. Simpson were filed only using Report Form for Policy 448 and were examined exclusively by Mrs. Simpson for purported violations of one or more unlawful harassment policies. Attachment C.

- On June 4, 2018 Superintendent Saylor received a grievance from me (dated June 1, 2018) at Step 3 (for the reasons stated in the face of the grievance) challenging the decision that I should be disciplined with unpaid leave of absence for three days. Attachment D.

- My grievance was remanded to Step level 1. Attachment D.

- On June 8, 2018 my Step 1 grievance was denied by Principal Kris Vancas, and at PSEA's request Step level 2 was passed over in favor of returning the grievance back to Superintendent Saylor for a Step 3 decision. Attachment D.

- One June 22, 2018 my grievance at Step 3 was *denied* by Superintendent Saylor who elaborated on her reasons for the 3-day suspension decision in the Simpson Report who stated inter alia "The superintendent's disciplinary action in this case was appropriate under the circumstances. Accordingly, the grievance is denied." Attachment D.

- On June 27, 2018, I requested a Step 4 hearing with the school board to challenge the Step 3 decision of Superintendent Saylor. Attachment D.

- Prior to December 19, 2018 the School Board denied my Level 4 appeal. (exact date unknown despite repeated requests by me to Superintendent Saylor, Board President, Jon Guizar, and District Legal Counsel, Carl Beard to receive the exact date of the Board's denial.) Attachment D.

- On December 20, 2018 my association representative submitted a Request for Grievance Arbitration Panel to the Pennsylvania Dept. of Labor & Industry checking the box "Has the grievance been processed up to arbitration step in accordance with the current agreement?" (Yes). Attachment E.

- On January 18, 2019 all parties understood that grievance steps up through Level 4 had been completed, and my June 2018 grievance was at Step 5 and awaiting arbitration.

Up to the January 18, 2019 meeting, there has not been any reference to Section 1122 of the School Code in the Simpson Report. Nor was there any reference to 22 Pa. Code § 235.4(b)(7) in the Simpson Report. For Mrs. Simpson to have examined such legal citations, she would have needed to have done it *sua sponte* since the originating complaint received by Mrs. Simpson on April 19, 2018 only alleged a violation of Board policy 448. Both the originating complaint and the Simpson Report focus entirely on the allegation that I violated school board policy on unlawful harassment.

No other violations were alleged and no other violations were examined or reported in the Simpson Report.

V. RETROACTIVE AMENDMENT OF THE SIMPSON REPORT IS IMPERMISSIBLE & RETROACTIVE AMENDMENT OF THE LEVEL 3 DECISION IS EQUALLY IMPERMISSIBLE

(i) Retroactively Amending the Complaint Against Me AND The Simpson Report Is Impermissible

The principle of *expressio un ius est exclusio alterius* attaches to the Simpson Report. *See Atcovitz v. Gulph Mills Tennis Club, Inc.*, 812 A.2d 1218, 1223 (Pa. 2002) ("We must infer that, under the doctrine of expressio un ius est exclusio alterius, the inclusion of a specific matter in a statute implies the exclusion of other matters.")

The meeting of January 18, 2019 and decision to suspend me for two days cannot be considered part of the original May 30, 2018 decision to suspend me for three days (the genesis of my June 2018 grievance), because to do so would constitute an improper attempt to retroactively amend the conclusions of the Simpson Report and the Unlawful Harassment Policy 448 complaint that led to it. I filed a grievance in June 2018 because Mrs. Simpson concluded that I had violated one or more of the board's unlawful harassment policies absent just cause and due process, so I challenged her decision. *This* was the basis of my grievance. *This* was the judiciable controversy that went through Step 4 and *this* is the judiciable controversy now awaiting a Step 5 arbitration.

One of the foundational tenets of constitutional due process is that I must be told the specific legal charges being leveled against me and have a fair opportunity to respond. Self-evidently, I cannot grieve a legal charge that I do not yet know about. By raising Section 1122 of the school code and 22 Pa. Code § 235.4(b)(7) for the first time on January 18, 2018, the school district is bringing **new** legal charges against me. Hence my **new** grievance.

(ii) Retroactively Amending the Grievance Step 3 Decision Against Me Is Impermissible

The meeting of January 18, 2019 and decision to suspend me for two day cannot be considered part of the original May 30, 2018 decision (Simpson Report) to suspend me for three days because to do so would constitute an improper attempt to retroactively amend the Level 3 decision of Superintendent Saylor on June 22, 2018. Superintendent Saylor signed the Simpson Report on May 30, 2018 that recommended that I be suspended for three (3) days of unpaid leave based on Mrs. Simpson's conclusion as to unlawful harassment. However, Dr. Saylor could have reconsidered that preliminary decision when the matter was brought to her attention at grievance Level 3.

Dr. Saylor denied my grievance at Level 3 and stuck with her decision that I be suspended for three days for violating an unlawful harassment policy.

Superintendent Saylor cannot get a "re-do" after-the-fact, because the judiciable controversy that the Step 4 school board heard was a three-day suspension not a two-day suspension. And the school board heard a controversy about an unlawful harassment policy and not Section 1122 of the school code or 22 Pa. Code § 235.4(b)(7). There is no such thing as judiciable controversy finishing at Level 4 and while the matters awaits a Level 5 arbitrator goes back down to Level 3 to change the punishment and reason for the punishment as outlined by the Level 2 administrator that Dr. Saylor signed off on May 30, 2018. Such an action would be a *prima facie* violation of Article 8 Section D of the collective bargaining agreement. The steps in a grievance procedure are Level 3, Level 4, Level 5 ...not Level 3, Level 4, awaiting Level 5, back to Level 3 again. There is no such thing as two Level 3 decisions in Article 8 of the collective bargaining agreement. By its actions on January 18, 2018 the school district has created a new controversy, hence my new grievance.

VI. TWO GRIEVANCES NOW EXIST AS A RESULT OF THE DISTRICT'S REFUSAL TO CORRECT THE SIGNIFICANT LEGAL ERRORS IN THE SIMPSON REPORT

As previously mentioned, a Level 5 arbitration is pending based on the judiciable controversy that started in June 2018. This judiciable controversy is that I allegedly violated one or more of the district's unlawful harassment policies and that I am to be suspended without pay for three days because of it. Apparently, the district's legal counsel knows that judiciable controversy is flawed and it cannot defend the indefensible (the Simpson Report), so it now wishes it to disappear as the basis for the adjudication. Instead of rectifying the very obvious mistakes made by the Human Resources Director, Michelle Simpson, regarding her decisions, investigation, and May 30, 2018 report against me, the district's legal counsel has embarked on a strategy of making the problem even worse by attacking my workplace rights *twice* in the hope that I would not notice the significant legal errors and inconsistencies in what I have been told.

Adding to the egregious errors made against me is now a suspension letter stating a new authority for my two-day suspension is to be found in Section 1122 of the school code. That section of the school code refers to termination not suspension. Since I was not terminated, such statutory reference is invalid on its face. Furthermore, 22 Pa. Code § 235.2 (Code of Professional Practice and Conduct for Educators) reads in relevant part "Violations of the Code may also be used as supporting evidence, though *may not constitute an independent basis for the suspension* or revocation *of a certificate*)." The district's legal counsel parsed his or her words carefully when saying, "I would also like to draw your attention to the Code of Professional Practice and Conduct..." because, I contend, the purpose was to hoodwink me into not understanding that neither Section 1122 applies (since I'm not being terminated) therefore the district cannot use 22 Pa. Code § 235.4(b)(7) as an independent basis even assuming that such citation had been timely raised; which it was not. There is no mention of 22 Pa. Code § 235.4((b)(7) in the Simpson Report. Issues not timely raised are waived.

The district's attempt to retroactively change the entirety of the judiciable controversy awaiting presentation to an arbitrator simply cannot stand. I believe the district behaved in bad faith by trying to do so, since these actions could have been designed to trick me into overlooking the fact that the letter, I was suddenly receiving on January 18, 2019 contained a new legal rationale for disciplining me. If left unchallenged in a new grievance within 7 days, it would result in me waiving my right to challenge the suspension and letter at all.

Such activity does not just seek to disregard the provisions of Article 8 of the collective bargaining agreement, it seeks to disregard even the most basic elements of constitutional due process. While it is not my desire to take this matter to federal court, I believe I would have good cause to do so. It is my desire that the district stop trying to protect Mrs. Simpson and do the right thing, which is to compensate me – a distinguished teacher in the district – for the significant harm that has occurred to me as a result of the fatally flawed Simpson Report being pushed through the grievance process at the taxpayers' expense. The best way of doing that is via amicable global settlement of both grievances and *not* continued escalation.

VII. THE FLAWED SIMPSON REPORT OF MAY 30, 2018

As a threshold matter, I explicitly deny all of the allegations made against me to date, and in all disciplinary matters to date, no what their alleged legal basis may be. The allegations are little more than gossip, hearsay, innuendo, and/or outright falsehoods. It fails logic that such allegations of wrongdoing – going back several years – could possibly co-exist with four consecutive years of a "distinguished" performance evaluation signed by my principal and approved by the superintendent. I am guessing that the school district's attorney knows the Simpson Report is flawed, but instead of addressing the problems with Mrs. Simpson, I have been made a scape-goat for her legal errors.

Some of the legal errors with the Simpson Report (without waiver of other claims I and/or my association may bring against the district) are as follows:

(i) Only *one* Report Form (for Board Policy 448) was submitted with *one* signature on it, yet three (3) people purportedly filed that complaint. Only *one* of them signed the certification statement that everything in the complaint is "true, correct, and complete to the best of my knowledge". One person cannot make statements for two other individuals. Thus, as a starting point the two people who did not sign the complaint form made unverified statements which have no evidentiary value.

(ii) None of the three (3) purported complainants have standing to raise allegations of improper conduct under Board Policies 238 and 348 because none of them are pupils or support employees.

(iii) No claim under Board Policies 238, 348, and 548 was submitted to Human Resources for investigation to my knowledge. Mrs. Simpson *sua sponte* raised those policies as judiciable matters when pending the Simpson Report. If I

allegedly harassed pupils, administrative employees, or support employees, then a complaint would have needed to have been made against me under either Board Policy 238, 348, or 548 using one or more of *those report forms*. No such complaint exists.

(iv) No complaint was made against me in April 2018 alleging that I had violated 22 Pa. Code § 235.4(b)(7); nor does the Simpson Report cite or conclude that I had violated 22 Pa. Code § 235.4(b)(7).

Even assuming *arguendo* that all the gossip, hearsay, innuendo, and/or outright falsehoods the complainants made against me on April 18, 2018 were true (which is expressly denied) then such allegations fail to state a claim upon which relief can be granted because Board Policy 448 defines the only ***two enumerated offenses*** (harassment and sexual harassment) as follows:

Definitions

- "For purposes of this policy, **harassment** shall consist of verbal, written, graphic or physical conduct relating to an individual's race, color, national origin/ethnicity, sex, age, disability, sexual orientation, religion or genetic information...".

- "For the purposes of this policy, **sexual harassment** shall consist of unwelcome sexual advances; requests for sexual favor; and other inappropriate verbal, written, graphic or physical conduct of a sexual nature ..."

- "Examples of conduct that may constitute **sexual harassment** includes...conduct...that creates an *intimidating, hostile or offensive working environment.*"

Mrs. Simpson called me into her office on May 31, 2018 to provide me and my Union Representative a one page summary of her investigation titled: "Results of investigation of unlawful harassment filed with the district on April 19, 2018." In her own written words, Mrs. Simpson said that she did not find me to be in violation of the first definition outlined in the Unlawful Harassment Policy. She did, however, suggest my guilt concerning the second definition of unlawful harassment concerning sexual harassment. She wrote that "upon interview of employees and investigation" my behavior was "severe" and "contrary to" three (3) unlawful harassment policies involving not just the staff, but the students and support staff.

Mrs. Simpson's written conclusion suggested evidence of sexual harassment and her "findings" were provided to me and the three (3) complainants, and she indicated my guilt using language clearly stated under sexual harassment of the Unlawful Harassment Policy as she informed me that her "thorough investigation" determined that I am "creating an intimidating, hostile...working environment." Mrs. Simpson refused to tell me exactly who filed a complaint against me or the reasons or evidence the complainants provided as grounds for making such a serious complaint as Unlawful Harassment, and she did not allow me a chance to defend myself against whatever the anonymous complaint was or her

anonymous findings. Instead she informed me that her recommendation made and upheld by the superintendent was that I be sanctioned after my summer vacation, which would involve a three (3) days suspension without pay, mandated counseling, and conflict resolution training. Her refusal to tell me any details (except that she "thoroughly investigated" the claims made against me) or to allow me an opportunity to refute any claims made against me was a violation of my due process rights. How can I defend what I do not know? To find me guilty of sexual harassment without my knowing the details of the allegation or having a chance to defend myself has caused me to suffer stress, anxiety and mental anguish for several months. To find out months later in December 2018 that not one of the complainants were suggesting I did anything under the Unlawful Harassment policy is beyond unbelievable, since an experienced Human Resources professional should never accidentally use words from the sexual harassment section of the policy, out of context.

XIII. CONCLUSION

The school district - by and through Mrs. Simpson – inflicted emotional distress on me, without cause, by recklessly and falsely leveling accusations of sexual harassment against me in the Simpson Report. Instead of fixing the problem and settling my grievances with the appropriate compensation, the school district's legal counsel has embarked on a strategy that feels equivalent to a persecution. It feels like I am to be battered into submission until I complain about this injustice no more. I would like to believe that my superintendent and my principal do not support this type of cover-up for Mrs. Simpson's errors. I would like to believe that this whole matter can be resolved without wasting more of the taxpayer's dollars so that I can continue doing the job I love to do – teaching our students – rather than be subjected to this continuous stress because of Mrs. Simpson's egregious errors.

As of today, there are now *two* grievances that must be processed. One in which the union does and/or is about to represent me in a Level 5 arbitration, and another based on the events of January 18, 2019.

Sincerely,

Lynn M Kipp

Lynn Kipp
4th Grade Teacher
Bellefonte Area School District

Cc: Mrs. Tammie Burnaford, Assistant Superintendent
Cc: Mr. Kristopher Vancas, Principal, Benner Elementary
Cc: Mrs. Elizabeth Whitehead, ESL Teacher & Union Representative
Cc: Mr. Jon Guizar, School Board President