

3/14/2019

JULIA C. DUDLEY, CLERK
BY: s/ CARMEN AMOS
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

CHERIE C. WHITEHURST,)
)
Plaintiff,)
)
v.)
)
BEDFORD COUNTY SCHOOL BOARD,)
)
Serve: Douglas R. Schuch)
Superintendent)
Bedford County Public Schools)
310 South Bridge Street)
Bedford, Virginia 24523)
)
and)
)
DOUGLAS R. SCHUCH,)
in his individual capacity,)
)
Serve: 310 South Bridge Street)
Bedford, Virginia 24523)
)
Defendants.)

Civil Action No.: 6:19CV00010

COMPLAINT

Comes now the Plaintiff, Cherie C. Whitehurst, Ed.D. (“Dr. Whitehurst”), by counsel, and files this Complaint and moves for judgment in her favor against the Defendants, Bedford County School Board (“BCSB”) and Douglas R. Schuch (“Schuch”), in his individual capacity, on the grounds and in the amounts set forth below:

Nature of the Case

1. This civil action seeks damages (1) against BCSB for discrimination against Dr. Whitehurst on the basis of her sex in violation of Title VII of the Civil Rights Act of 1964, §§ 2000e *et seq.* (“Title VII”), including retaliating against her for alleging such discrimination

despite being presented with clear evidence of the improper and illegal actions undertaken by its superintendent, Schuch, and (2) against Schuch, in his individual capacity, pursuant to 42 U.S.C. § 1983, for his actions taken under color of state law to discriminate against Dr. Whitehurst on the basis of her sex, thereby denying her the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

Parties, Jurisdiction, and Venue

2. Dr. Whitehurst is a resident of Bedford County and, as of the date of this filing, has been continuously employed by BCSB since the start of the 1990-1991 academic year.

3. BCSB is the legal entity created and authorized to supervise the public education system in Bedford County, Virginia, with its principal place of business located at 310 South Bridge Street, Bedford, Virginia 24523.

4. Furthermore, BCSB satisfies the definition of an employer under Title VII, because – pursuant to the definition set forth in 42 U.S.C. § 2000e – it has had more than fifteen employees in each of the twenty or more calendar weeks in the current or preceding calendar year. On information and belief, for all dates relevant to the allegations contained in this Complaint, BCSB has employed at least 500 individuals.

5. Pursuant to Va. Code § 22.1-58 *et seq.*, each school division must employ a superintendent of schools who shall perform the duties “prescribed by law, by the school board, and by the State Board” [of Education].

6. Since on or about July 1, 2009, BCSB has employed Schuch, a resident of Bedford County, as division superintendent. As such, he has acted under color of statute, ordinance, regulation, custom, or usage in performing the duties of his position.

7. Because this is a case brought under both Title VII and 42 U.S.C. § 1983, this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

8. Furthermore, Dr. Whitehurst has complied with all jurisdictional prerequisites for the filing of an action under Title VII. On or about July 11, 2018, she filed a written charge of discrimination with the Richmond, Virginia office of the U.S. Equal Employment Opportunity Commission (“EEOC”) under Charge Number 438-2018-01415. On or about February 4, 2019, at the request of Dr. Whitehurst, the EEOC issued to her a Notice of Right to Sue, a copy of which was received by her counsel on February 7, 2019. A copy of this Notice of Right to Sue (the “Notice”) is attached hereto as Exhibit 1. Dr. Whitehurst has filed this action within ninety days of receipt by her counsel of this Notice.

9. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) because BCSB is located and operates in the Western District of Virginia, Schuch is a resident of and works in this District, and the events giving rise to this action occurred in this District and, more specifically, in the Lynchburg Division.

Statement of Facts

Dr. Whitehurst’s Exemplary Career with BCSB

10. A Bedford native, Dr. Whitehurst graduated from Liberty High School in 1980 and received her Bachelor of Science in Education from James Madison University in 1984. She began her teaching career in the Harrisonburg area with Rockingham County Public Schools following her graduation in 1984, and she remained there until she and her husband came home to Bedford in 1990.

Rise from Classroom Teacher to Deputy Superintendent

11. Upon returning home, Dr. Whitehurst began her employment with BCSB in the summer of 1990 as a middle school teacher, first at Forest Middle School for three years and then at Staunton River Middle School (“SRMS”) for another three years. During this time, Dr. Whitehurst completed her Master of Education in School Administration with Lynchburg College (now the University of Lynchburg), and in 1995 she was named Bedford County Public Schools Teacher of the Year.

12. For the 1996-1997 academic year, Dr. Whitehurst was promoted to the position of Assistant Principal at Staunton River Middle School before financial difficulties experienced by BCSB resulted in her and more than a dozen other administrators returning to the classroom for the 1997-1998 school year. She returned to role of assistant principal, this time at Jefferson Forest High School, for the 1998-1999 and 1999-2000 academic years.

13. Dr. Whitehurst was again promoted, rising to the role of principal beginning with the 2000-2001 academic year. She served at Staunton River High School for six years before moving to Liberty High School, which was her alma mater as well as significantly closer to her home.

14. Dr. Whitehurst served as principal at Liberty High School until her promotion – effective July 31, 2009 – to the role of Assistant Superintendent of Bedford County Public Schools. She was hired by BCSB after the hiring of Schuch as superintendent and after she was considered for the open position of Superintendent of BCSB.

15. In her role as Assistant Superintendent, Dr. Whitehurst oversaw all schools and centers, supervised principals, and served as BCSB’s Discipline Hearing Officer.

16. Beginning July 1, 2014, Dr. Whitehurst assumed the new role of Deputy Superintendent and saw her portfolio of responsibilities grow, as she now also served as BCSB's Chief Academic Officer, supervising instruction and special education.

17. For the 2017-2018 academic year, Dr. Whitehurst's contract called for compensation of \$123,015.00 in base salary, \$6,151.00 in an additional doctoral supplement, and \$3,600.00 for an automobile entitlement, for a total salary of \$132,766 (the "2017-2018 Salary Agreement"). A copy of the 2017-2018 Salary Agreement is attached hereto as Exhibit 2.

Accolades and Additional Professional Experience

18. Dr. Whitehurst's achievements have also been recognized outside of BCSB. In May 2016, she received the J. Edward Petty Outstanding Graduate Alumni Award from Lynchburg College, and, in October 2017, she was honored by the Bedford Professional Women with their 2017 Woman of Achievement Award.

19. She has also served as an instructor for multiple college courses, teaching classes on "Supervision of Instruction" and "Foundations for Educational Leaders" at Liberty University and "Effective Instructional Strategies" at Lynchburg College. For nine years, she also served as a visiting faculty member of Virginia Tech's Recently Appointed Administrators Institute, teaching on the topic of "Safety and Crisis Management."

Glowing Performance Evaluations

20. During her time as Assistant Superintendent and then Deputy Superintendent, Dr. Whitehurst reported directly to Schuch, who was responsible for completing her annual evaluations.

21. Each year, Dr. Whitehurst received superlative evaluations from Schuch, with his comments including the following:

- a. June 22, 2010: “. . . an **OUTSTANDING LEADER and EDUCATOR**. Her job performance over the past school year has far exceeded my expectations” and “Dr. Whitehurst will be an **EXCELLENT SUPERINTENDENT**. I have depended on her leadership daily, and I have fully trusted her to function as superintendent in my absence. Bedford County Public Schools is truly blessed to have such a remarkable leader in service to our students.” (Emphasis original.)
- b. July 21, 2011: “. . . continues to be a **SUPERB LEADER** for our school division and community. Over the past year she has again demonstrated unquestionable integrity and dedication to leading and directing our school principals” and “Dr. Whitehurst will be an **EXCELLENT SUPERINTENDENT**” and “. . . I am not sure that Cherie fully realizes the positive impact that she had made for our students and their learning.” (Emphasis original.)
- c. July 26, 2012: “. . . remains a **SUPERB LEADER** for our school division and community. Over the past three years I have observed her transformation from a superstar high school principal to an equally impressive leader, mentor, and trainer of principals” and “. . . I do not believe that she realizes just how amazing her school division leadership skills have improved the quality of our organization and specifically the quality of our school principals” and “. . . our principals have the best possible leader, mentor, and advocate that I could imagine” and “. . . ready to be an **EXCELLENT SUPERINTENDENT**” and “I am equally blessed to have such an outstanding individual as Assistant Superintendent.” (Emphasis original.)
- d. July 23, 2013: “. . . continues to be one of the **STRONGEST LEADERS** in our school division and community” and “. . . the most dedicated and conscientious professional that I have ever encountered” and “. . . ready to be a school division **SUPERINTENDENT**. Bedford County Public Schools continues to be blessed by her leadership, integrity, and unfailing commitment to our schools.” (Emphasis original.)
- e. August 11, 2014: “. . . is an **OUTSTANDING LEADER and EDUCATOR**. Over the past year Dr. Whitehurst continued to lead by example, exhibiting an extremely strong work ethic combined with high standards of professionalism and integrity” and “Dr. Whitehurst is ready to succeed as a school division **SUPERINTENDENT**, and our school division is blessed that she will be expanding her responsibilities in the future as our Deputy Superintendent, where her talents and visionary leadership will undoubtedly benefit our schools and community.” (Emphasis original.)
- f. December 1, 2015 (June 2014 – December 2015 evaluation): “. . . has continued to be one of the strongest leaders in our school division. Her leadership responsibilities have grown tremendously since the school division reorganized in July 2014 and she became Deputy Superintendent and Chief Academic Officer” and “[t]he recent success of Bedford County Public Schools has been a direct

result of Dr. Whitehurst and the leadership that she provides daily. As a leader of leaders her job is very challenging, but she has demonstrated the strength, integrity, and vision to thrive amidst these many challenges. Dr. Whitehurst is clearly ready to succeed as a school division **SUPERINTENDENT**, if she ever decides to pursue that opportunity. Our school division is blessed to have such a dynamic leader and educator serving as its Deputy Superintendent and Chief Academic Officer.” (Emphasis original.)

- g. July 27, 2017 (January 2016 – June 2017 evaluation): “. . . has continued to provide exceptional leadership to the Academic Leadership Team, our school principals, and the entire school division” and “Dr. Whitehurst has continued to dedicate herself to the students, families, and employees of Bedford County Public Schools. Her loyalty, work ethic, humility, and integrity have been a model of servant leadership that inspires those who encounter her daily. Under Cherie’s leadership, we have achieved many milestones as a school division. Bedford County Public Schools is very fortunate to have such a dynamic leader and educator serving as Deputy Superintendent and its Chief Academic Officer.”

Dr. Whitehurst Endures Years of Discriminatory Conduct

22. During the same period that she was receiving exemplary performance evaluations from Schuch on an annual basis, Dr. Whitehurst was also becoming the object of regular discriminatory actions and comments from Schuch.

23. Over the course of nine years, what were initially viewed as isolated events of discrimination evolved into a sustained pattern of bullying and unfair treatment – all on the basis of Dr. Whitehurst’s sex – that culminated in multiple discriminatory acts in May and June 2018.

24. Schuch’s inappropriate actions ran the gamut from exclusionary to offensive and manipulative. While the volume of these actions makes them too numerous to catalogue fully, the following items reflect many of Schuch’s worst actions and make clear the threat that he feels from successful, professional women who are merely trying to do their jobs and help the children of Bedford County learn.

Treated Differently than her Male Counterparts

25. In the first months after she was hired as Assistant Superintendent, Dr. Whitehurst began to feel marginalized by Schuch, whose internal reorganization process shifted responsibilities away from her position and to men that held subordinate roles.

26. Similarly, early in their respective tenures, Schuch refused to eat lunch alone with Dr. Whitehurst in public for fear that someone may suspect that he was engaging in an extramarital affair. Schuch never adhered to the same rule with Dr. Whitehurst's male counterparts who held senior management positions with BCSB, thereby putting her at a distinct disadvantage with respect to the development of her professional relationship with Schuch.

Derogatory Comments about Women

27. Schuch has repeatedly made candid comments that reflect his true feelings regarding the inferiority of women in the workplace compared to men.

A. Women Causing Problems

28. For example, in two instances, Schuch commented that a colleague and Dr. Whitehurst were "the only women on senior staff and how does it look for the two of you to be having problems?"

29. There was no other reason for Schuch to refer to women in making that comment if not to differentiate them from men, whom he apparently believes do not cause problems.

B. "Cycling"

30. On multiple other occasions across various years, when Dr. Whitehurst has respectfully questioned Dr. Schuch regarding a particular decision or the rationale for such a decision, he has often remarked that Dr. Whitehurst was "cycling."

31. The use of this term is patently offensive, clearly referring to a woman's menstrual cycles and the misogynistic stigmas associated with them, and it demonstrates Schuch's belief that, if a woman is questioning his logic or reasoning, she must be experiencing her period.

C. "Like Talking to My Wife"

32. On still other occasions when Dr. Whitehurst respectfully questioned Schuch, he replied that "talking to you is like talking to my wife."

33. The negative connotation of such an oft-repeated comment has been clear: Schuch believed Dr. Whitehurst was nagging or pestering him when she should have been quiet and known her place.

D. Retaliation for Reporting Schuch to HR

34. When Dr. Whitehurst finally complained about Schuch's repeated "wife" and "cycling" comments to BCSB's human resources department in late 2016, her concerns were inappropriately shared with Schuch, who – without consulting Dr. Whitehurst – made a referral for her to BCSB's employee assistance program ("EAP").

35. This represented a calculated decision by Schuch to use the EAP referral as a weapon against Dr. Whitehurst, demonstrating retaliation for questioning his actions and reaffirming his view that women were overly emotional and unable to handle the stresses of the workplace.

36. The embarrassment caused by Schuch's actions led Dr. Whitehurst, who had been a member of the All Points EAP Board of Directors, to resign from the Board in January 2017.

Comments to Legal Counsel

37. In addition to conveying concerns to BCSB's human resources department in late 2016, Dr. Whitehurst also communicated via email with two of BCSB's attorneys, Stacy Haney and Pakapon Phinyowattanachip, in early January 2018 with respect to her concerns regarding Schuch's discriminatory conduct.

38. Schuch's behavior did not change following these communications with BCSB's legal counsel.

Demotion of Dr. Whitehurst

39. Schuch's pattern of discriminatory behavior reached its crescendo in May and June 2018, beginning with his improper comments in the interview of a principal candidate.

40. In early May 2018, Dr. Whitehurst joined Schuch in interviewing a candidate for a principal position. The candidate was a white male and, if hired, would have replaced a black female in that job.

41. During the interview, Schuch – apparently believing that sex and race affect one's approach to a job – made the statement to the candidate (as part of a question) that “[the outgoing principal] is a woman, you are a man; she is African American and you are white.”

42. At an appropriate time, and in an appropriate setting, following the conclusion of the interview, Dr. Whitehurst mentioned to Schuch that his statement was inappropriate and could easily be construed as offensive by a candidate.

43. Schuch disagreed with this statement.

44. Coming immediately on the heels of Dr. Whitehurst calling him out, on May 21, 2018, Schuch recommended that BCSB demote her to the position of principal for the 2018-2019 school year, which recommendation was approved (the “Principal Contract”). (Embarrassingly

and ironically (for a school system), this document misspelled the word “principal.”) A copy of the Principal Contract offered to Dr. Whitehurst is attached hereto as Exhibit 3.

45. Schuch also effectively relieved Dr. Whitehurst of her job responsibilities for the balance of the academic year (i.e., through the end of June 2018).

46. Schuch blindsided Dr. Whitehurst when he presented the Principal Contract to her and, during his conversation with her, failed to identify any specific action taken by Dr. Whitehurst that necessitated his recommendation that she be demoted.

47. In fact, Schuch made this recommendation despite having given Dr. Whitehurst a glowing performance evaluation the previous summer, which read, in pertinent part (as previously stated above):

Dr. Whitehurst has continued to dedicate herself to the students, families, and employees of Bedford County Public Schools. Her loyalty, work ethic, humility, and integrity have been **a model of servant leadership** that inspires those who encounter her daily. **Under Cherie’s leadership, we have achieved many milestones as a school division.** Bedford County Public Schools is very fortunate to have such **a dynamic leader and educator** serving as Deputy Superintendent and its Chief Academic Officer.

(Emphasis added.)

48. Curiously, nothing had changed since Dr. Whitehurst received this evaluation the prior summer except that she had called Schuch out for his inappropriate line of questioning in the aforementioned principal interview.

49. She had not been the subject of any disciplinary action or received any feedback, formal or informal, from Schuch regarding concerns with respect to her performance.

50. Nevertheless, Schuch recommended Dr. Whitehurst’s demotion and stripped her of her responsibilities for the remainder of the academic year.

51. In addition to representing a professional step backwards for Dr. Whitehurst, it would also result in the reduction of her total salary by \$3,600.00, removing the automobile entitlement afforded to her in her role as Deputy Superintendent.

52. Adding further insult to injury, the Principal Contract was for a term of one-year only and was explicitly not renewable, despite Dr. Whitehurst having achieved continuing contract status as a principal prior to becoming Assistant Superintendent in July 2009.

BCSB's Flawed Investigation of Schuch's Conduct

53. Following this action by Schuch, Dr. Whitehurst filed a claim of sex-based discrimination with BCSB, outlining the sustained pattern of discrimination by Schuch that she had endured over the previous nine years.

54. Although BCSB engaged an independent investigator to review the allegations against Schuch, BCSB allowed Schuch to remain on the job, which ran contrary to well established best practices in the field of human resources.

55. This decision by BCSB preserved Schuch's access to both the elected members of BCSB, who would decide his and Dr. Whitehurst's fates, and the employees whose recollections would be a crucial part of corroborating Dr. Whitehurst's allegations against Schuch and, by extension, BCSB.

56. The independent investigator hired by BCSB, who was not an attorney, produced a one-sided report for BCSB (the "Investigation Report") that was flawed in multiple key respects, including, but not limited to, the following:

- a. It lacked any legal standard under which the allegations against Schuch were considered;
- b. It openly speculated about key questions despite the investigator being presented with evidence to the contrary;

- c. It provided the benefit of the doubt to Schuch in every possible instance with no such courtesy afforded to Dr. Whitehurst;
- d. It evaluated each of Dr. Whitehurst's allegations in a vacuum rather than considering them for what they represented, which was a years-long tapestry of discriminatory harassment and marginalization of Dr. Whitehurst by Schuch; and
- e. It ignored that Schuch had already begun to retaliate against Dr. Whitehurst by recommending to the elected members of BCSB that she be demoted.

57. To her credit, in the final line of the Investigation Report, the investigator cautioned Schuch and BCSB against further retaliation against Dr. Whitehurst: "In accordance with Policy GBA, retaliation against anyone who has reported discrimination or harassment or participated in any related proceeding is strictly prohibited."

Further Retaliation Against Dr. Whitehurst

58. Schuch and BCSB simply ignored Policy GBA and the clear warning from the independent investigator.

59. Only one business day after Dr. Whitaker submitted her report, Schuch signed a letter that – rather than reassigning Dr. Whitehurst to a principal position, as seen in Exhibit 3 above – instead demoted Dr. Whitehurst to a teaching position, a role that she had not held for more than two decades (i.e., since the 1995-1996 school year) (the "Demotion Letter"). A copy of the Demotion Letter is attached hereto as Exhibit 4.

60. In the Demotion Letter, Schuch wrote that "[t]he reasons for my recommendation include your unwillingness to effectively understand and support the organizational structure of the school division. Additionally, your attitude and personal interactions with many school division leaders have created a professional climate that limits collaboration and impedes progress in implementing the BCPS strategic plan." Schuch cited no specific behavior by Dr. Whitehurst that was problematic or fell below his or BCSB's expectations.

61. Again, since Dr. Whitehurst received her overwhelmingly positive July 2017 evaluation, nothing had changed except that she had the audacity to ask Schuch about what she rightfully perceived to be inappropriate questioning during a principal candidate interview.

62. In fact, in addition to the glowing comments from the July 2017 evaluation previously highlighted above, Schuch stated in the second sentence of that evaluation – in his own words – that Dr. Whitehurst had “renewed her commitment to student academic success **while simultaneously leading innovative practices that support the BCPS Strategic Plan.**” (Emphasis added.)

63. As the Demotion Letter indicated, Dr. Whitehurst’s salary would “be reduced accordingly.” While no salary figure was set forth in the Demotion Letter, on information and belief this would have resulted in a total reduction of more than \$72,000.00 compared to her compensation as Deputy Superintendent.

64. Two days after receiving the Demotion Letter, Dr. Whitehurst – through her attorneys – filed a new, separate charge of sex-based discrimination against Schuch and BCSB following this additional, brazen act of discrimination (the “Second Charge”). A copy of the Second Charge is attached hereto as Exhibit 5.

65. On June 21, 2018, BCSB held a lengthy hearing regarding Dr. Whitehurst’s original allegations of discrimination but refused to consider the Second Charge, thereby providing further evidence of discrimination against Dr. Whitehurst. To date, BCSB has never investigated, or held a separate hearing to consider, the Second Charge.

66. At the June 21 meeting, BCSB upheld Schuch’s recommendation that Dr. Whitehurst be demoted but, rather than placing her in a classroom, instead assigned her to the position of instructional coach. A new contract was issued to Dr. Whitehurst, but it again

expressly stated that it was for one year only and was not renewable (the “First Instructional Coach Contract”). A copy of the First Instructional Coach Contract is attached hereto as Exhibit 6.

67. BCSB subsequently corrected the First Instructional Contract so that it was continuing in nature (the “Amended Instructional Coach Contract”). A copy of the Amended Instructional Coach Contract is attached hereto as Exhibit 7, and Dr. Whitehurst signed it on June 28, 2018.

68. This demotion resulted in a reduction of Dr. Whitehurst’s total compensation from \$132,766.00 to \$114,262.00, a loss of more than \$18,500.00 annually.

Damages Sustained by Dr. Whitehurst

69. As demonstrated in significant detail, BCSB’s intentional actions have violated the rights of Dr. Whitehurst that are protected by Title VII, and Schuch has acted with malice or, in the alternative, with reckless indifference to the rights of Dr. Whitehurst in violation of the Fourteenth Amendment to the United States Constitution.

70. As a result of these actions, Dr. Whitehurst has suffered a variety of damages, including, but not limited to, the following: loss of wages, both in the past and in the future, as well as physical and emotional pain, mental anguish, embarrassment, inconvenience, and the loss of enjoyment of life, which will most likely continue in the future.

71. Specifically, in addition to the aforementioned reduction in total compensation for the current academic year, Dr. Whitehurst has been physically unable to be present in the work place due to the emotional trauma that she has experienced there as a result of the discriminatory actions of Schuch and BCSB. Being in the work place causes ocular migraines, anxiety attacks with hyperventilation, exacerbation of depression, and a general decline in emotional stability.

Dr. Whitehurst has been diagnosed with acute stress reaction, major depressive episode-moderate, and post-traumatic stress disorder and has been under the regular treatment of multiple counselors, including a counselor with training in assisting victims of trauma. The physical and mental effects of BCSB's and Schuch's discriminatory actions are expected to continue into the foreseeable future.

72. As a result of these effects of discrimination, Dr. Whitehurst has been on leave under the Family and Medical Leave Act since August 9, 2018, which leave will continue through the end of the current academic year and exhaust her accumulated sick leave.

73. As a further result of these effects of discrimination, Dr. Whitehurst is no longer able – either physically or emotionally – to work in the field of education, which will require her to retire from her field of choice multiple years earlier than expected, at significant personal financial cost, and seek employment elsewhere.

COUNT I –
VIOLATION OF TITLE VII OF THE
CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §§ 2000e et seq.
(Against BCSB)

74. The allegations contained above in paragraphs 1 through 73 are hereby incorporated as if fully stated herein.

75. BCSB's conduct, both through its own actions and the actions of its agents, such as Schuch, has intentionally discriminated against Dr. Whitehurst in violation of Title VII by, among other things:

- a. Treating her differently on the basis of her sex, including subjecting her to a variety of discriminatory comments and actions directed toward her because of her sex, which culminated in the recommendation that she be demoted for the 2018-2019 academic year; and
- b. Retaliating against her when she dared to file with BCSB a claim for sex-based discrimination.

76. As a direct and proximate result of BCSB's discriminatory actions, Dr. Whitehurst has suffered and continues to suffer injury, including, but not limited to, lost or diminished earnings, both past and future, and physical and emotional harm, mental anguish, distress, humiliation, and indignity.

77. For being subjected to these discriminatory actions in violation of Title VII, Dr. Whitehurst requests the relief described below.

COUNT II –
BROUGHT UNDER 42 U.S.C. § 1983
FOR VIOLATION OF THE FOURTEENTH AMENDMENT
TO THE UNITED STATES CONSTITUTION
AS A RESULT OF DISCRIMINATION ON THE BASIS OF SEX
(Against Schuch in his individual capacity)

78. The allegations contained above in paragraphs 1 through 73 are hereby incorporated as if fully stated herein.

79. By virtue of Dr. Whitehurst's sex, she is a member of a particular and clearly identifiable group of people.

80. Schuch denied Dr. Whitehurst the equal protection of the laws by discriminating against her on the basis of her sex in violation of the Fourteenth Amendment to the United States Constitution by, among other things:

- a. Treating her differently on the basis of her sex, including subjecting her to a variety of discriminatory comments and actions directed toward her because of her sex, which culminated in the recommendation that she be demoted for the 2018-2019 academic year; and
- b. Retaliating against her when she dared to file with BCSB a claim for sex-based discrimination.

81. In discriminating against Dr. Whitehurst in the manner described above, Schuch treated her differently from other employees to whom she was similarly situated.

82. Schuch's actions – all of which occurred under color of statute, ordinance, regulation, custom, or usage – were undertaken purposefully, intentionally, and maliciously and bear no substantial relationship to any sufficiently important government interest.

83. As a direct and proximate result of Schuch's actions, Dr. Whitehurst has suffered and continues to suffer injury, including, but not limited to, violation of her constitutional rights, lost or diminished earnings, both past and future, and physical and emotional harm, mental anguish, distress, humiliation, and indignity.

84. For being subjected to these discriminatory actions in violation of the Fourteenth Amendment to the United States Constitution, Dr. Whitehurst requests the relief described below.

WHEREFORE, the Plaintiff, Cherie C. Whitehurst, Ed.D., respectfully requests that this Court enter judgment against the respective Defendants, Bedford County School Board and Douglas R. Schuch, in his individual capacity, as follows:

- a. With respect to Count I (against Bedford County School Board):
 - i. Back pay since the effective date of Dr. Whitehurst's demotion (i.e., July 1, 2018), including, but not limited to, the reduction in her base salary, the elimination of the doctoral supplement paid to her, the loss of the automobile entitlement paid to her, and the loss of various insurance benefits;
 - ii. Front pay, including benefits, until June 30, 2027, in lieu of reinstatement;
 - iii. Compensatory damages in the amount of Three Hundred Thousand Dollars (\$300,000.00), exclusive of costs and interest; and
 - iv. Dr. Whitehurst's reasonable attorneys' fees and the costs of this litigation, including expert witness fees.
- b. With respect to Count II (against Douglas R. Schuch, in his individual capacity):
 - i. Compensatory damages in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), exclusive of costs and interest;

- ii. Punitive damages in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00), exclusive of costs and interest; and
 - iii. Dr. Whitehurst's reasonable attorneys' fees and the costs of this litigation.
- c. With respect to both Counts, pre- and post-judgment interest as allowable by law;
- and
- d. Such other and further relief as the Court deems just and appropriate.

TRIAL BY JURY IS REQUESTED.

CHERIE C. WHITEHURST

By Counsel

/s/ W. Huntington Byrnes

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