

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION**

JOHN DOE, by and through his next friend
JANE DOE,

Case No. 1:16-cv-00373

Plaintiff,

Hon. Travis R. McDonough
Hon. Christopher H. Steger

v.

HAMILTON COUNTY BOARD OF
EDUCATION, *et al.*,

Defendants.

Consolidated with:

RICHARD ROE, a minor student, by and through his
parents and next friends, RICHARD ROE, SR. and
JANE ROE,

Case No. 1:16-cv-00497

Plaintiff,

v.

HAMILTON COUNTY DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

**PLAINTFFS RICHARD ROE AND JOHN DOE’S JOINT MOTION TO COMPEL
DOCUMENTS BEING WITHHELD BY THE HAMILTON COUNTY DEPARTMENT
OF EDUCATION CONCERNING OUTSIDE INVESTIGATOR TURNED RULE 26
EXPERT COURTNEY BULLARD**

Come now the Plaintiffs in Civil Action No. 1:16-cv-00373 and No. 1:16-cv-00497, and
move this Honorable Court to compel Defendant Hamilton County Department of Education
(“HCDE”) to produce all materials provided to or produced by outside investigator now turned
Rule 26 Expert Courtney Bullard (“Bullard”), including all documents withheld in the Privilege
Log of Courtney Bullard, and in support thereof would respectfully show unto this Honorable
Court as follows:

I. INTRODUCTION

A. Facts & Procedural History

On September 9, 2016, Plaintiff Doe filed his Complaint against HCDE and three individual defendants stemming from the sexual assault, sexual harassment, and bullying he suffered while a student in the HCDE system. (Case No. 1:16-cv-00373, Doc. No. 1.) On December 16, 2016, Plaintiff Roe filed his Complaint making similar accusations against the same defendants. (Case No. 1:16-cv-00497, Doc. No. 1.) The two cases were consolidated by order of this Court on March 14, 2017. (Case No. 1:16-cv-00497, Doc. No. 36; Case No. 1:16-cv-00373, Doc. No. 56.) An Amended Scheduling Order was entered by the Court setting the cut-off date for discovery for January 22, 2018.

In March 2016, HCDE hired Courtney Bullard, an attorney, to undertake an independent investigation of the facts precipitating Plaintiffs' lawsuits. (Ex. A, Retention of Outside Investigator, 03/22/16) Ms. Bullard's stated purpose was as follows:

An independent investigator to conduct a fair and impartial investigation into the following:

- Assess the climate of the OHS basketball program regarding reporting and addressing of bullying, hazing and/or sexual harassment;
- Review OHS and HCDE policies and procedures to determine where, if any, deficiencies in communication or conflicts in policy may exist with respect to bullying, hazing and/or sexual harassment; and
- Review training for student-athletes and OHS athletics staff to determine where, if any, deficiencies exist with respect to bullying, hazing and/or sexual harassment.

(Ex. B, Report of External Investigation and Action Plan) ("Bullard Report") Following seven weeks of investigation in which she interviewed 40 individuals, including students, teachers, administrators, coaches, and parents, Ms. Bullard provided HCDE with a 24-page report on or about August 12, 2016. (*See id.*) The Bullard Report detailed findings based upon the interviews,

along with issues with bullying, hazing, and sexual harassment at Ooltewah High School, and HCDE and made 22 recommendations for addressing those issues. (*See id.*)

On August 18, 2017, given the public interest and concern, the Hamilton County Board of Education voted unanimously to release the report publicly. *See* Times Free Press (Chattanooga), “Report detailing investigation into Ooltewah High School to be released,” Aug. 18, 2017, *available at* <http://www.timesfreepress.com/news/local/story/2016/aug/18/report-detailing-investigation-ooltewah-high-school-be-released/381994/> (last visited Sept. 13, 2017).

The attorneys representing HCDE must “own” the fact that their client intentionally released the Bullard Report to the public (including the victims of the sexual assault and their attorneys). The Bullard Report may have been released by HCDE in the interest of complete transparency, or for political purposes, or to satisfy the outcry from the citizens of Hamilton County. Regardless of the reason, HCDE made the knowing decision to release the Bullard Report to the public. Once released, the report was widely circulated by news outlets. *See, e.g.*, Times Free Press (Chattanooga), “Report calls Ooltewah High School’s hazing training ‘deficient,’” Aug. 20, 2016, *available at* <http://www.timesfreepress.com/news/local/story/2016/aug/20/report-culture-hazing-existed-among-ooltewah/382226/> (last visited Sept. 13, 2017); NewsChannel9 (Chattanooga), “Hamilton County Dept. of Education releases report on OHS assault,” Aug. 19, 2016, *available at* <http://newschannel9.com/news/local/hamilton-county-department-of-education-to-release-report-on-ohs-assault> (last visited Sept. 13, 2017); WATE.com (Knoxville), “Hamilton County schools release rape, hazing investigation report,” Aug. 19, 2016, *available at* <http://wate.com/2016/08/19/hamilton-county-schools-release-rape-hazing-investigation-report/> (last visited Sept. 13, 2017); WRCBtv.com (Chattanooga), “Final report: Ooltewah & HCDE ‘deficient’ in hazing prevention training,” Aug. 18, 2016, *available at*

<http://www.wrcbtv.com/story/32794129/final-report-ooltewah-hcde-deficient-in-hazing-prevention-training> (last visited Sept. 13, 2017). In fact, many of the school board members held a press conference discussing the Bullard Report and how the school board would move forward. (<http://www.clipsyndicate.com/video/play/6519265>)

The report was, and remains, publicly available online through a number of sources. Thus, as described further below, this case finds similarity to the high profile sexual harassment case at Baylor University in Waco, Texas, where an independent report released publicly required disclosure of the underlying investigative file too. *See Jane Doe v. Baylor Univ.*, 2017 U.S. Dist. Lexis 127509, at *2-3 (W.D. Tex. Aug. 11, 2017).

B. Initial Discovery Dispute Resolved by Partial Disclosure of “Bullard Report”

After filing suit, Plaintiff Roe’s counsel served his First Requests for Production of Documents upon HCDE on March 8, 2017. (Ex. C, Pl.’s 1st Req. Prod. Docs.) Plaintiff Roe requested production of the full contents of the Bullard investigative file, as follows:

1. The complete investigation file resulting in the “Report of the External Investigation,” undertaken by Attorney Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams. This includes all interview notes, witness statements including but not limited to those on “Addendum A,” the final report, earlier drafts of the report, recordings, emails, communications from witnesses or interviewees, all documents listed in “Addendum B,” and/or other data relating or contributing to the Report.

Defendant HCDE responded on May 8, 2017. (Ex. D, Def. HCDE Resp. Pl.’s 1st Req. Prod. Docs.) In response to Request 1, Defendant disclosed only the public report prepared by Courtney Bullard and communications with Ms. Bullard about the public report. Defendant refused to produce the investigative file supporting Ms. Bullard’s findings and recommendations, and

asserted that the information identified in Addendum A and B of Ms. Bullard's report was protected by FERPA and the attorney-client privilege and work product doctrines. (*See id.*)

After receiving Defendant's Response, the parties addressed FERPA matters through a protective order. (Doc. 49). However, Defendant still did not produce the investigative file. As for the alleged "attorney-client privilege" and "work product" doctrines, Plaintiff Roe's counsel began reaching out to HCDE's counsel to advise there were no privileges and, even if there were, they were clearly waived by the disclosure of the Bullard Report (which publicly details her findings and what was said by various individuals). HCDE's counsel indicated it would take up the matter with Ms. Bullard. On September 8, 2017, having heard no response, Plaintiff Roe's counsel inquired again. HCDE's counsel again said it would address the matter with Ms. Bullard and respond that day. Hearing no response, on September 11, 2017, Plaintiff's counsel reached out again. This time, HCDE's counsel asserted that *Ms. Bullard* believed the underlying documents were protected from *her* disclosure, but it would confer and respond that day. (*Id.*) Plaintiff's counsel agreed to wait, but also advised that Ms. Bullard is not the holder of any privileges (she is not the client) and, regardless, waiver clearly applies.

On September 14, 2017, Plaintiffs filed a Motion to Compel Production of the Bullard Investigative File with this Honorable Court. (Doc. 57) While the motion was pending, HCDE advised Plaintiffs in October of 2017 that HCDE was designating Ms. Bullard as a Rule 26 expert witness. (*See* Doc. 114 (Order Withdrawing Richard Roe's Motion to Compel)) HCDE agreed to produce the documents from Ms. Bullard's file, but stated that it was withholding certain documents that were allegedly protected under 26(b)(4)(C)(i-iii). (*See id.*) Plaintiffs consented to this production, but requested that a Privilege Log be tendered. (*Id.*)

Ms. Bullard's investigative file and Privilege Log were served on October 18, 2017. The Privilege Log contains 130 documents that HCDE refused to produce. (Ex. E.) As support for refusing to produce the documents in the Privilege Log, HCDE asserted (1) attorney-client privilege, (2) attorney-client privilege and attorney work product doctrine, (3) attorney-client communications between Mr. Bennett and the school board, and (4) attorney-client communications between school board counsel and board members. attorney-client privilege and attorney work product doctrine.

Plaintiffs requested production of the 130 documents/communications in the Privilege Log on November 30, 2017. The documents have not been produced and an agreement regarding production has not been reached.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 37 states, "On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Fed. R. Civ. P. 37(a)(1). "A party seeking discovery may move for an order compelling an answer, designation, production, or inspection . . . if . . . a party fails to produce documents . . . as requested under Rule 34." *Id.* at Rule 37(a)(3)(b)(iv). Under Rule 26(b), "Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."

In this case, Defendant has asserted that the information and documents sought are protected by the attorney-client privilege and attorney work product privilege. (Ex. D, Def. HCDE

Resp. Pl.'s 1st Req. Prod. Docs.) "A party asserting the attorney-client or work product privilege to bar discovery bears the burden of establishing that either or both is applicable." *John B. v. Goetz*, 879 F. Supp. 2d 787, 892 (M.D. Tenn. 2010). As an aside, the protective order already in place in this matter resolves any FERPA issues. (Doc. No. 49.)

III. ARGUMENT

A. The Investigative File is Not Protected By Attorney-Client Privilege.

Bullard's full investigation is not protected by attorney-client privilege for three reasons. First, the privilege is not applicable because HCDE did not retain Ms. Bullard for the purpose of obtaining legal advice. Second, even if the privilege were applicable, HCDE waived the privilege when it publicly released the Bullard Report. Finally, repurposing Ms. Bullard as a Rule 26 expert does not revive the waived privileges. Plaintiffs will address each in turn.

1. **The Attorney-Client Privilege is Not Applicable Because Ms. Bullard Was Not Retained to Obtain Legal Advice.**

The purpose of the attorney-client privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). While the privilege theoretically extends to all communications between an attorney and client, it protects "only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege." *Fisher v. United States*, 425 U.S. 391, 403 (1976). Thus, "[t]he attorney-client privilege applies where legal advice of any kind is sought." *Alomari v. Ohio Dep't of Pub. Safety*, 626 F. App'x 558, 570 (6th Cir. 2015) (internal quotation marks omitted). "Fundamentally, legal advice involves the interpretation and application of legal principles to guide future conduct or to assess past conduct." *Id.* (internal quotation marks omitted). "When a communication

involves both legal and non-legal matters, we consider whether the predominant purpose of the communication is to render or solicit legal advice.” *Id.* (internal quotation marks omitted). “This predominant purpose should be assessed dynamically and in light of the advice being sought or rendered, as well as the relationship between advice that can be rendered only by consulting the legal authorities and advice that can be given by a non-lawyer.” *Id.* (internal quotation marks omitted).

The Bullard Report makes clear that her purpose was *not* to give legal advice. Rather, it was to “assess the climate of the OHS basketball program,” “review OHS and HCDE policies and procedures,” and “review training.” (Ex. B, p. 1.) Her “predominant purpose” was not “to render or solicit legal advice.” *Id.* Instead, her investigation consisted of touring the school, interviewing students, parents, and school personnel, reviewing school policies, and making findings and recommendations. (Ex. B, p. 2-3.) Her recommendations are mostly limited to her objectives: an assessment of the culture of the basketball team and athletic program and a review of how training and policies might be improved to ensure student safety. (*Id.*) **Moreover, instead of a private report for litigation, Ms. Bullard’s report was purposefully released to the public and to news media by a strategic decision of the Board.**

At multiple points in her report, Ms. Bullard refers to “the school board attorney”—clearly a person other than herself. For example, at the very beginning of her report, Ms. Bullard states, “I provided regular updates to the school board attorney, Scott Bennett.” (*Id.* at p. 1.) At another point, Ms. Bullard states, “There is no disputing that the main assailants were the three players involved in the Gatlinburg incident; however, there were reports of other upperclassmen participating. This information was provided to the school board attorney.” (*Id.* at p. 7.) Clearly, Ms. Bullard was not acting as HCDE’s counsel but as an investigator who happens to be a lawyer.

Based on all the evidence, it is clear that Ms. Bullard’s files are not protected by attorney-client privilege because she was not hired for the primary purpose of giving “legal advice” to HCDE. She was, in fact, hired to address a matter of important public concern after a hue and cry—with the report being made public, an audience in addition to HCDE. This was no inadvertent disclosure requiring protection but a knowing choice to publicly produce.

2. Even if the File Were Privileged, HCDE Waived the Privilege by Publicly Releasing the Bullard Report.

As argued above, it is Plaintiffs’ position that Ms. Bullard’s investigative file is not subject to attorney-client privilege because she was not hired by HCDE to, and in fact did not, render legal advice. However, even if the Court finds that the file is somehow privileged, that privilege was *obviously* waived when HCDE publicly released the Bullard Report to the news media and any interested citizens, including the attorneys representing the victims of the sexual assault and pervasive bullying and hazing.

It is well-established that “[d]isclosure of any significant portion of a confidential communication waives the privilege as to the whole.” *Nguyen v. Excel Corp.*, 197 F.3d 200, 208 (5th Cir. 1999); *see also In re Perrigo Co.*, 128 F.3d 430, 438 (6th Cir. 1997) (stating that a party waives the attorney-client privilege if it releases an allegedly privileged report in “significant part”). Moreover, when a party voluntarily discloses the content of a privileged communication, “waiver applies to the rest of the communications on the same subject matter.” *In Re Grand Jury Proceedings October 12, 1995*, 78 F.3d 251, 255 (6th Cir. 1996). In determining the scope of a waiver, “the District Court must be guided by fairness concerns.” *Id.* at 256.

Here, the Board voted unanimously to release the Bullard Report, which was then widely circulated among media outlets, posted online, and remains to this day publicly available online.

(See Section I(A), *surpa*.) The Board did not just release a “significant portion” or “significant part” of the report, they released the *entire* Report. By doing so, HCDE waived any assertion of privilege over the “rest of the communications on the same subject matter.” *Id.* at 255. Thus, the underlying statements, notes, recordings, etc. must be produced. In fact, such production is likely to save the parties *immense time*.

HCDE cannot release the Bullard Report to the public, but then have its attorneys assert that certain documents and communications undergirding the report remain protected or shielded from production. Selective waiver in the context of dealing with governmental entities has been addressed by the Sixth Circuit in *In Re Columbia/HCA Healthcare*, 293 C.3d 289 (6th Cir. 2002).

In rejecting the doctrine of selective waiver, the Court in *In Re Columbia/HCA Healthcare* concluded as follows:

...any form of selective waiver, even that which stems from a confidentiality agreement, transforms the attorney-client privilege into “merely another brush on an attorney’s palette, utilized and manipulated to gain tactical or strategic advantage.” *Steinhardt*, 9 F.3d at 235. Once “the privacy for the sake of which the privilege was created [is] gone by the [client’s] own consent, ... the privilege does not remain in such circumstances for the mere sake of giving the client an additional weapon to use or not at his choice.” *Green v. Crapo*, 181 Mass. 55, 62, 62 N.E. 956, 959 (1902) (Holmes, J.). “The client cannot be permitted to pick and choose among his opponents, waiving the privilege for some and resurrecting the claim of confidentiality as to others, or to invoke the privilege as to communications whose confidentiality he has already compromised for his own benefit.” *Permian*, 665 F.2d at 1221.

HCDE published the report to the public. It cannot now pick and choose which documents to produce.

B. The Investigative File Is Not Protected By the Work Product Doctrine Either.

Though often cited together, attorney-client privilege and attorney work product are two “distinct” protections. *United States v. Noble*, 422 U.S. 225, 238 n. 11 (1975). While the attorney-client privilege protects communications seeking legal advice, *Alomari*, 626 F. App’x at 570, the attorney work product doctrine protects “documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” Fed. R. Civ. P. 26(b)(3).

In defining “in anticipation of litigation,” the Sixth Circuit applies the “because of” test—that is, documents are protected if they were “prepared or obtained *because of* the prospect of litigation.” *United States v. Roxworthy*, 457 F.3d 590, 593 (6th Cir. 2006). “It is clear that documents prepared in the ordinary course of business, or pursuant to public requirements unrelated to litigation, or for other nonlitigation purposes, are not covered by the work product privilege Thus, a document will not be protected if it would have been prepared in substantially the same manner irrespective of the anticipated litigation.” *Id.* at 593-94.

Here, HCDE hired Ms. Bullard in March 2016, a full six months before any legal action was filed against them. The purpose of her investigation was not to prepare for litigation, or even to review HCDE’s potential liability or exposure for a private report; rather, she was charged with reviewing the “culture” of Ooltewah High School’s athletics programs which was then released *publicly*.

Moreover, HCDE was *required* by federal law to prepare or have prepared the report. As explained in a 2011 Dear Colleague Letter (DCL) promulgated by the U.S. Department of Education Office of Right Rights, in order to comply with Title IX, a school that receives a complaint of sexual harassment or sexual violence must undertake an “adequate, reliable, and

impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence.” (Ex. E, Dear Colleague Letter (Apr. 4, 2011), p. 9, *available at* <https://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201104.html>);¹ *see also* 34 C.F.R. § 106.8(b) (requiring all recipient schools to adopt and publish grievance procedures for resolution of complaints). The DCL goes on to explain, “[T]he Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred . . .” (*Id.* at p. 10.)²

Even the press coverage of the Board’s decision to hire Ms. Bullard stated the reason for the retainer was federal requirements, not in anticipation of litigation. *See* Times Free Press (Chattanooga), “Veteran pair manage Hamilton County schools for now,” Mar. 18, 2016, *available at* <http://www.timesfreepress.com/news/local/story/2016/mar/18/veterpair-will-manage-schools-now/355938/> (last visited Sept. 14, 2017) (“The Office of Civil Rights requires school systems to conduct investigations after incidents like what happened at Ooltewah High School and develop plans to prevent similar problems.”).

Ms. Bullard’s report makes clear that her role was undertaking this required investigation, not preparing for litigation. She concludes that sexual harassment did occur (Ex. B, at p. 12) and applied the preponderance of the evidence standard then-required for Title IX investigations (*id.* at p. 3.) As articulated in *Roxworthy*, “documents prepared . . . pursuant to public requirements

¹ The April 4, 2011 DCL was in place at the time HCDE commissioned and released the Bullard Report, through September 22, 2017, when the Department of Education withdrew that specific DCL. However, this remains a requirement for all schools that receive federal funds. (*See* “Sept. 2017 Q&A on Campus Sexual Misconduct,” *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>, at 3)

² This remains a requirement of all schools receiving federal funds. (*See* “Sept. 2017 Q&A on Campus Sexual Misconduct,” *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>, at 3)

unrelated to litigation, or for other nonlitigation purposes, are *not* covered by the work product privilege Thus, a document will *not* be protected if it would have been prepared in substantially the same manner irrespective of the anticipated litigation.” *Roxworthy*, 457 F.3d at 593-94 (emphasis added).

Because Ms. Bullard’s report was undertaken pursuant to public requirements, not in anticipation of litigation, and would have been prepared in substantially the same manner regardless of litigation, it is not protected by the attorney work product doctrine. Therefore, the Court should compel HCDE to turn over to Plaintiffs the full investigative file.

Finally, even if the attorney work product doctrine applies to some of the 130 documents/communications set forth in the Privilege Log, HCDE has waived the work product protection by releasing the report to the public, including the Defendant’s adversaries in this case. Again, the Sixth Circuit in *In Re Columbia/HCA Healthcare* provides instruction on this issue:

Other than the fact that the initial waiver must be to an “adversary,”^[29] there is no compelling reason for differentiating waiver of work product from waiver of attorney-client privilege. Many of the reasons for disallowing selective waiver in the attorney-client privilege context also apply to the work product doctrine. The ability to prepare one’s case in confidence, which is the chief reason articulated in *Hickman, supra*, for the work product protections, has little to do with talking to the Government. Even more than attorney-client privilege waiver, waiver of the protections afforded by the work product doctrine is a tactical litigation decision. Attorney and client both know the material in question was prepared in anticipation of litigation; the subsequent decision on whether or not to “show your hand” is quintessential litigation strategy. Like attorney-client privilege, there is no reason to transform the work product doctrine into another “brush on the attorney’s palette,” used as a sword rather than a shield. *Steinhardt*, 9 F.3d at 235.

Again, like our discussion of the attorney-client privilege above, preserving the traditional confines of the rule affords both an ease of judicial administration as well as a reduction of uncertainty for parties faced with such a decision. These and other reasons “persuade us that the standard for waiving the work-product doctrine should be no more stringent^[30] than the

standard for waiving the attorney-client privilege” – once the privilege is waived, waiver is complete and final. Westinghouse, 951 F.2d at 1429.

Once HCDE board members voted and released the report, waiver was “complete and final.” *Id.*

C. *Jane Doe, et al. v. Baylor University*, No. 6:16-cv-173-RP (W.D. Tex. 2017).

This Court may be familiar with the well-publicized sexual assault case involving Baylor University. It features the same issue of discovery of an investigative report and communications/documents alleged to be protected by the attorney-client privilege and/or work product doctrine.

In August of 2017, the Western District of Texas faced substantially similar questions in *Jane Doe, et al. v. Baylor University*. Baylor was sued by ten women who accused the school’s athletic programs of having a culture of sexual violence leading to their assaults. Like HCDE, the school publicly announced they were hiring the law firm of Pepper Hamilton to undertake an independent investigation into the accusations. Like HCDE, it publicly released Pepper Hamilton’s final report. *See* 2017 U.S. Dist. Lexis 127509, at *2-3 (W.D. Tex. Aug. 11, 2017). When plaintiffs’ counsel requested the full investigative file, Baylor – like HCDE – refused to turn it over, citing privilege. *Id.* at *3. Like Plaintiffs Roe and Doe, the plaintiffs filed a motion to compel. *Id.*

The Court held that, while the full investigative file was protected by attorney-client privilege, **the University had waived that privilege when it released the full report to the public.** *Id.* at *11. The Court found that, unlike here where Ms. Bullard’s stated purpose was to assess culture and training, the University’s stated purpose in retaining Pepper Hamilton was “to conduct an independent and external review of *Baylor University’s institutional responses to Title*

*IX and related compliance issues.” Id. at *7 (emphasis added). Thus, unlike here, Baylor University was specifically seeking, and received, legal advice.*

However, the *Baylor* Court further found that the attorney-client privilege had been waived. It rejected the University’s argument that because only a report was released, rather than the entire file, it could not constitute waiver. The Baylor court stated:

Baylor chose to publicly release a detailed summary of Pepper Hamilton’s investigation that disclosed, among other things, attorney-client communications. While the information contained in these summaries was previously confidential, Baylor’s decision to prepare and release a summary of those communications indicates its intentional waiver of that confidentiality. The logical extension of Baylor’s argument is that the creation and public release of any document discussing attorney-client communications, no matter how detailed or self-serving, would not constitute waiver. That cannot be the case.

Id. at *15.

The instant case is even more obvious. HCDE did not release a mere summary. They released the entire report. HCDE cannot release the report, while also claiming that the rest of the investigation is privileged. By releasing the report, HCDE has waived any claim of attorney-client privilege.

D. Repurposing Ms. Bullard as a Rule 26 Expert to Revive the Waived Privileges

The incident in Gatlinburg and the history of hazing at OHS was the subject of a media tornado. The school board members of HCDE are elected officials. Using the report as a sword in the media, but as a shield in this lawsuit should not be permitted.

The intentional waiver of the attorney-client privilege and the work product doctrine by HCDE was either a political decision or a business decision. Regardless, the waiver was intentional.

Ms. Bullard executed an Affidavit on September 15, 2017 that was filed with this Court on September 15, 2017. (Ex. F) She stated that “[m]y understanding was that the review and advice was in anticipation of litigation.” She asserted this position earlier in a letter, dated April 26, 2017. (Ex. G) Despite her “understanding,” it was THE CLIENT, HCDE, that made the decision to release her report.

HCDE has now repurposed Ms. Bullard as its sole Rule 26 expert. By doing so, it appears that HCDE is taking the position that the waived privileges are now revived by Rule 26(b)(4)(C)(i-iii). The bell cannot be un-rung.

The designation of Ms. Bullard as a Rule 26 expert in October of 2017 only makes the discovery of the withheld documents even more relevant. Even though waiver has absolutely occurred in this case, Rule 26(b)(4)(C)(i-iii) does not protect communications concerning the compensation from the expert’s study or testimony, identify facts or dates that the party’s attorney provided and that the expert considered in forming the opinions to be expressed or identifying assumptions that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed.

Certainly, any communications between HCDE school board attorney Scott Bennett and Attorney Courtney Bullard are not covered by the attorney-client privilege. There is no “client” in the exchange.

Again, the protections of Rule 26 do not apply to Ms. Bullard because *the client* intentionally waived the attorney-client privilege and work product doctrine. Moreover, the communications between HCDE school board attorney and Courtney Bullard occurred before Ms. Bullard was disclosed as a Rule 26 expert. Indeed, she did not agree to become an “expert” in this case until October 12, 2017 (Ex. H, Letter produced by HCDE with Bullard Report).

Finally, as a practical matter, the disclosure limitations of Rule 26 do not apply to witnesses who are not retained experts. The Rule clearly contemplates a relationship between the attorney involved in the case and her communications with an expert required to submit a written report to the Court.

Ms. Bullard submitted an Affidavit with the Court setting forth her perceived role in this case. She never mentioned the role of a Rule 26 expert. Indeed, her report was meant only for HCDE, until the school board voted to make the report public.

Defendants should not be allowed to reach back to the beginning of Ms. Bullard’s involvement in this case to shield relevant information by giving Ms. Bullard a different title. The withheld documents/communications took place when Ms. Bullard was not a Rule 26 expert. She was an outside investigator.

IV. CONCLUSION

Therefore, for the reasons set out above, Plaintiffs’ Motion to Compel should be GRANTED.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent to the following via the Court's Electronic Filing System on December 11, 2017:

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s/ Eric J. Oliver

CERTIFICATE OF CONFERENCE

I, Eric J. Oliver, counsel for Plaintiff Richard Roe, hereby certify that counsel have conferred on the issues raised in this motion. I have discussed this issue with counsel for HCDE, but the matter remains unresolved. It is apparent the parties require Court guidance on the issues raised in this motion.

s/ Eric J. Oliver



HAMILTON COUNTY DEPARTMENT OF EDUCATION
3074 Hickory Valley Road
Chattanooga, Tennessee 37421
423.209.8400

March 22, 2016

Re: Retention of outside investigator

Dear Ms. Bullard:

Pursuant to the decision of the Hamilton County Board of Education on March 17, 2016, this letter serves as your retainer on behalf of the Hamilton County Department of Education ("HCDE") with respect to the matter referenced below.

1. **Scope of Engagement.** Pursuant to this agreement, you will be responsible for conducting an independent review and for providing legal advice to HCDE as part of that review. As a part of that review, we understand that there may be a second attorney and a paralegal assigned to the matter to provide assistance, as necessary. It is our intention that your review be thorough and objective. Your review will be overseen by the attorney for the Hamilton County Board of Education, Scott Bennett. We will ask you to provide periodic reports to Mr. Bennett, and on occasion meet with the Board of Education to discuss your progress.

Your review should include the following:

- Assess the climate of the Ooltewah High School ("OHS") basketball program regarding the reporting and addressing of bullying, hazing and/or sexual harassment.
 - Review OHS and HCDE policies and procedures to determine where, if any, deficiencies in communication or conflicts in policy may exist with respect to bullying, hazing and/or sexual harassment.
 - Review training for student-athletes and OHS athletics staff to determine where, if any, deficiencies exist with respect to bullying, hazing and/or sexual harassment.
2. **Termination of Agreement.** While it is our expectation that this engagement will last through the course of this project, the Board of Education reserves the right to terminate this agreement with or without cause. In the case of termination, the Board will pay for all work performed in accordance with this agreement.
 3. **Billing.** In accordance with our discussions, the Board will pay Spears, Moore, Rebman & Williams, PC ("Spears Moore") at its usual and customary rates for attorneys or paralegals as of the date of this letter with a discounted governmental rate. You should utilize as appropriate less expensive resources within your office to provide this representation to reduce the overall cost to the Board. Your current rate is \$200 an hour. A second attorney staffed to this matter

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will be billed at \$175 hour, paralegals at \$85 an hour. The Board will also pay reasonable expenses in connection with your services. Invoices are to be sent to Mr. Bennett, who will review and approve them for payment.

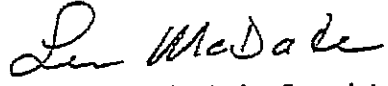
4. Conflict of Interest. As a condition of this representation, Spears Moore will adhere to all applicable conflict of interest rules.

Enclosed are two (2) originals of this agreement. Please sign and date each agreement and return one original to me at the above address.

We very much appreciate working with you and your colleagues on this important matter.

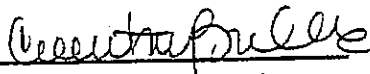
Sincerely,


Dr. Kirk Kelly, Acting Superintendent of Schools


Dr. Lee McDade, Acting Superintendent of Schools

I agree to the above terms of representation.

Spears, Moore, Rebman & Williams, PC

By: 
Courtney H. Bullard

Date: 3.22.16

cc: Dr. Jonathan Welch, HCDE Board Chairman
Scott Bennett, Attorney for the Board of Education

REPORT OF THE EXTERNAL INVESTIGATION

I. Introduction

The Hamilton County Department of Education ("HCDE") provides approximately 42,000 students with K-12 education.¹ Ooltewah High School ("OHS") is one of the largest schools in Hamilton County, with approximately 1,600 students and 100 teachers and staff. During the 2015-2016 school year, Mr. Jim Jarvis served as principal for OHS. Ms. Stephanie Allen, Ms. Sylvia Hutsell and Mr. Wendell Weathers served as assistant principals for OHS.²

OHS has a vibrant athletics program consisting of boys' baseball, basketball, soccer, cross country, and football; girls' cheerleading, dance, basketball, soccer and softball; a swim team and track and field.

II. Appointment as External Investigator and Scope of Investigation

Appointment

On December 22, 2015, a member of the OHS boys' basketball team, with the assistance of two other members, assaulted a freshman player with a pool cue while on a team trip in Gatlinburg. As a result of the incident, on March 17, 2016, the HCDE School Board voted to retain me as an independent investigator to conduct a fair and impartial investigation into the following:

- Assess the climate of the OHS basketball program regarding the reporting and addressing of bullying, hazing and/or sexual harassment;
- Review OHS and HCDE policies and procedures to determine where, if any, deficiencies in communication or conflicts in policy may exist with respect to bullying, hazing and/or sexual harassment; and
- Review training for student-athletes and OHS athletics staff to determine where, if any, deficiencies exist with respect to bullying, hazing and/or sexual harassment.³

On March 22, 2016, the relationship was formalized.

During the investigation, I provided regular updates to the school board attorney, Scott Bennett. At the end of June, I provided the school board with my Preliminary Findings and Recommendations of the External Investigation before the completion of my investigation. The purpose behind submitting the preliminary findings early was to provide information to assist the HCDE in making any policy and personnel decisions for the upcoming 2016-2017 academic year. Those findings are incorporated into this report.

¹ HCDE website.

² Mr. Jesse Nayadley previously served as one of the assistant principals. Mr. Nayadley was placed on administrative leave on January 14, 2016. Thereafter, Mr. Weathers served as assistant principal.

³ During the course of my investigation, based on information received and as more fully explained in Section III of the Analysis & Factual Findings, I expanded the scope of the investigation into the OHS football program.

Criminal Investigations

The Gatlinburg incident resulted in criminal charges brought against the assailants and certain adults who were on the trip. While some of the charges against the adults were resolved during the course of the investigation, one remains. In addition, the charges against the assailants remain.

My investigation is not a criminal investigation, and it is not a substitute for the pending criminal investigations. As part of my investigation, I reviewed interviews conducted by the Hamilton County Sheriff's Office ("HCSO"), the Department of Children's Services ("DCS"), and the transcript of the preliminary hearing for Mr. Andre Montgomery, Mr. Jesse Nayadley and Mr. Karl Williams on February 15, 2016 in the Juvenile Court of Hamilton County. As of the date of this report, despite numerous attempts, I have been unable to obtain copies of the police reports associated with the Gatlinburg incident, talk with Detective Rodney Burns in Sevier County, or talk with District Attorney Neil Pinkston in Hamilton County.

III. Overview of Methodology

I independently identified, obtained and reviewed information relevant to the investigation. I determined the course of the investigation and selected individuals to interview. I did not advise the HCDE or OHS personnel of my selections or contents of the interviews. HCDE and OHS administrators and employees fully cooperated with requests for information and interviews.⁴ I maintained all communications and documents related to the external review as privileged and confidential and in accordance with the Family Education Rights and Privacy Act.⁵

As part of my investigation, I spent the better part of seven (7) weeks at OHS conducting interviews. OHS administration were aware of the timing of some of my visits; however, on most occasions I arrived unannounced. The times of my arrival and departure varied and, as such, I was able to observe different parts of the school day. I observed the busiest times of the school day on many occasions: the beginning and ending, class changes and lunch. I also was at the school after hours when some of the extra-curricular activities were taking place. I independently walked the halls throughout the day and toured the school.

Interviews

I interviewed 40 individuals, including OHS administrators, teachers and students, the parent or guardian of students⁶ and HCDE administrators. I met with any third parties who contacted me and claimed to have information relevant to the investigation. A list of all interviewees is set forth in Addendum A. The interviews were conducted in-person at OHS, HCDE, law offices of

⁴ All HCDE and OHS personnel cooperated with a request for an interview with the exception of Mr. Montgomery, boys' head basketball coach, who declined to be interviewed through his counsel because of pending criminal charges.

⁵ 20 U.S.C. §1232g; 34 CFR Part 99.

⁶ Some parents or guardians provided written authorization for me to meet with their child without them present. The majority of students were interviewed with a parent or guardian present.

an attorney representing interviewees, my office or other locations convenient for interviewees. In some instances, I conducted follow-up interviews by phone.

Witnesses were advised of the scope of my review and asked to provide any relevant information: whether good, bad or neutral. Witnesses were requested to keep the contents of their interview confidential. Witnesses also were advised that the HCDE and OHS prohibit retaliation of any kind for participating in the investigation and that if they felt they were experiencing retaliation, to contact me. All witnesses were provided with my business card.

Documents

I conducted an extensive review of the HCDE and OHS policies, procedures and training related to bullying, hazing and sexual harassment. I reviewed student disciplinary files of the assailants and employee personnel files of those involved in the Gatlinburg incident. A list of all documents reviewed is attached as Addendum B. I also reviewed applicable federal and state laws and regulations.

Standard of Review

In accordance with federal law regarding claims of sexual harassment, I used "preponderance of the evidence" as the standard of proof in evaluating whether HCDE's response to a complaint of sexual harassment was reasonably prompt.⁷ The scope of my investigation included an analysis of whether a culture of hazing or bullying existed and OHS's response to that culture, which falls outside of OCR's guidance on a standard of review. For consistency, the same standard was applied in evaluating those matters as well.

Delays

I conducted the majority of the witness interviews within a seven (7) week span in an effort to complete the interviews before school dismissed for summer break. Many of the witnesses were reluctant to participate, which ultimately caused unexpected delays in conducting interviews. For example, some witnesses declined to participate, but then changed their minds. Some witnesses agreed to participate and then did not show up for the interview. Some of those witnesses did subsequently reschedule.

Furthermore, I discovered additional witnesses to interview and documentation to review in early June, as more fully explained in Section V of the Analysis & Factual Findings, which delayed the completion of my investigation.

Terminology

This report addresses issues related to bullying, hazing and sexual harassment. These terms are often used by the general public in imprecise ways and sometimes confused. In addition,

⁷ Office of Civil Rights, Dear Colleague Letter, April 11, 2011.

conduct that fits within one term also may fit into another (i.e. bullying may also be sexual harassment). Each is prohibited by applicable law and the HCDE and OHS policies.

For purposes of this report, these terms are described below. These definitions are not intended as full descriptions of the applicable law, regulations and policies, but merely as a point of reference for the reader. In some instances, these definitions are those prescribed by HCDE and therefore are noted as such and utilized in evaluating employee or student conduct within the report.⁸

1. **Sexual Harassment** is one type of discrimination based on gender. In a school setting, sexual harassment generally means unwelcome conduct or written, verbal or electronic communication where (a) sexual favors are threatened to be used as the basis for employment or academic decisions, (b) the conduct or communication unreasonably interferes with an individual's work performance or participation in an education program or activity, or (c) the conduct or communication has the purpose or effect of creating a hostile, intimidating or offensive academic environment. It includes, but does not require, unwanted physical contact.

Examples of prohibited sexual harassment can include verbal and electronic communications about a person's physical appearance or sexual activities, sexual innuendos and joking, sexually explicit photos and videos, and touching, including sexual assault and sexual violence.

The HCDE states that "harassment (sexual, racial, ethnic, religious) includes words, gestures, threats, or any other conduct that is severe, pervasive or persistent and creates a hostile environment that interferes with or limits a student's ability to participate in or benefit from services, activities, or opportunities offered by a school."⁹ It states also that sexual offenses, which constitute major offenses resulting in short-term suspension or possible expulsion, are "conduct of a sexual or indecent nature towards another person that is accompanied by actual physical force."¹⁰

2. **Sexual assault** includes rape and other forms of non-consensual sexual contact.

3. **Title IX** refers to the Education Amendments Act of 1972. Although this federal law prohibits sex discrimination, sexual harassment, and sexual violence in the school's educational programs and activities, Title IX often is referred to for the requirement of gender equity in athletics' programs.

4. **Bullying** "always involves at least these three elements: (1) unwanted, aggressive behavior, (2) involving an actual or perceived imbalance of power, that is (3) repeated or

⁸ During the course of my investigation, HCDE approved Board Policy 6.304 – Student Discrimination, Harassment, Bullying, Cyber-Bullying and Hazing. For purposes of assessing employee and student conduct, I utilized the Code of Conduct and relevant policies in place at the time the incidents took place. In assessing the policies and procedures and making recommendations, I reviewed both the policies in place at the time of the incident and the revised policy.

⁹ HCDE Code of Conduct.

¹⁰ *Id.*

occurring over a period of time.”¹¹ Bullying is defined by the HCDE as “unwanted, aggressive, repeated behavior that involves a power imbalance and places a student in reasonable fear and causes a hostile education environment.”¹² A power imbalance may be real or perceived by the victim. Bullying can take many forms (both direct and indirect), such as hitting or punching, teasing or name-calling, intimidation through words or gestures, or social exclusion.

5. **Cyber-bullying** is defined by the HCDE as “bullying that takes place using electronic technology. Electronic technology includes devices and equipment such as cell phones, computers, and tablets, as well as communication tools including social media sites, text messages or emails, rumor sent by email or posted on social network sites, and embarrassing pictures, videos, websites or fake profiles.”¹³

6. **Hazing** is defined by the HCDE as “any act intended to or reasonably expected to have the effect of humiliating, intimidating or demeaning a student or endangering the mental or physical health of the student committed by an individual or group against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with any school or program operated by the school district.”¹⁴

The Report

I intentionally avoided ascribing specific statements and conduct to particular witnesses in the report to encourage candid interviews and to protect the identity of minors. I provided HCDE with relevant information regarding individual conduct that may justify further action.

To date, I still am attempting to follow up with some individuals who may have information relevant to the investigation. I also have outstanding requests that may contain information relevant to this investigation, such as reports requested from Sevier County Juvenile Court. I am submitting the report prior to completion of those interviews because I do not believe any information obtained from those individuals will substantively change my findings. As such, I reserve the right to supplement or amend this report at a later date, if necessary.

Any decision to prepare and submit the preliminary report and this final report has been at my sole discretion and a result of how information has been received and the investigation has unfolded. The timing and submission of this report during the election process is not intended to have any effect on that process and is merely coincidental. I have not been contacted by any

¹¹ Civil Rights and Bullying Compliance FAQs by the Tennessee Department of Education, referencing the definition of bullying developed by Dan Olweus and used in the Olweus Bullying Prevention Program more fully discussed in Section V(a) of my Analysis & Factual Findings. The U.S. Department of Education Office of Civil Rights, through its interagency bullying-resource Web site, www.stopbullying.gov, defines bullying as “unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time.”

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

board member and/or HCDE administrator attempting to influence how my investigation is conducted or when my findings are released.

ANALYSIS & FACTUAL FINDINGS

I. The Culture of the 2015-2016 OHS Boys' Basketball Program

Overview of Program

The OHS boys' basketball program is comprised of a freshmen, junior varsity ("JV") and varsity team. While the majority of freshmen play on the freshmen team, for the 2015-2016 season, four (4) freshmen were chosen to play on the varsity team.

Mr. Jesse Nayadley served as assistant principal and athletic director for OHS. Mr. Nayadley fully cooperated with the investigation.

Mr. Andre Montgomery served as the head coach of the JV and varsity boys' basketball teams as a paid employee. Mr. Montgomery declined to participate in the investigation through his attorney due to pending criminal charges.

Mr. Karl Williams served as an assistant coach of the JV and varsity boys' basketball teams as an unpaid volunteer. Mr. Williams declined to participate in the investigation through his attorney due to pending criminal charges.

Mr. Jeremy Robinson served as the coach for the freshmen boys' basketball team as an unpaid volunteer. Mr. Robinson declined to participate in the investigation.

There were thirty-two (32) players on the boys' basketball roster for the 2015-2016 season. Out of the thirty-two (32) players, nineteen (19) were freshmen, and four (4) of those freshmen played on the varsity team. Of the remaining upperclassmen, nine (9) made the trip to Gatlinburg where the incident at issue occurred.

I attempted to interview all of the players listed on the basketball roster. Fifteen (15) players' parent or guardian agreed to allow their son to participate in the investigation. Two (2) declined to participate in the investigation, and the remaining players' parent or guardian could not be reached, despite repeated attempts.

In addition to interviews, I toured the boys' basketball locker room and coaches' offices.

Culture¹⁵ of Hazing Prior to the Gatlinburg Incident

I found that a culture of hazing existed on the varsity basketball team prior to the Gatlinburg incident. This conclusion is based on my interviews of players and a review of the HSCO and DCS interviews that revealed the following:

- Nine (9) players stated that “racking in” or the “freshmen rack” occurred on the basketball team prior to the Gatlinburg incident.¹⁶ “Racking in” is described as upperclassmen turning off the lights in the locker room, grabbing a freshman player and punching him with fists from the neck down, without the intention of causing injury. One player stated that the older players would lock or block both locker room doors before turning the lights off. Players stated that the purpose was to bring the freshmen onto the varsity team or “the big leagues.” One player stated that they were “hit hard to the point you want to fight.” Accounts stated that it lasted 20 to 30 seconds.
- Of the players who did not have personal knowledge of “the rack,” they did observe the lights out in the locker room.
- Freshmen varsity players stated that “racking in” began when the football season ended and the assailants began practicing with the basketball team. Prior to the assailants joining the team for practices, players stated that it was openly discussed as something that would happen to them.
- Freshmen varsity players stated that “racking in” happened more than once from November 22 until December 22. While reports on frequency varied from once a week to three times a week, there is no disputing it happened on more than one occasion.
- Although freshmen varsity team players were the main target, some members of the freshmen basketball team reported that it also happened to them.
- There is no disputing that the main assailants were the three players involved in the Gatlinburg incident; however, there were reports of other upperclassmen participating. This information was provided to the school board attorney for disposition.
- Three upperclassmen stated that the “freshmen rack” happened to them when they were freshmen.

¹⁵ Merriam-Webster Learner’s Dictionary defines culture as “a way of thinking, behaving, or working that exists in a place or organization.” It further states that culture is “the set of shared attitudes, values, goals and practices that characterizes an institution or organization.”

¹⁶ One parent stated that “racking in” is a gang term and is therefore an inappropriate term to use to describe this behavior. Enough players, however, recognized and used the term to describe the behavior that it is appropriate to use in this context.

The HCDE Code of Conduct defines hazing as "any act intended to or reasonably expected to have the effect of humiliating, intimidating or demeaning a student or endangering the mental or physical health of the student committed by an individual or group against a student in connection with pledging, being initiated into, affiliating with, holding office in, or maintaining membership in any organization affiliated with any school or program operated by the school district." The behavior described as "racking in" fits this definition of hazing in that it had the possible effect of intimidating the freshmen players in connection with being affiliated with the varsity team. The majority of the players interviewed stated that they did not know the definition of hazing prior to the Gatlinburg incident, but they did understand bullying. Many players described "racking in" as horseplay or "boys being boys." This description is indicative of a desensitization and minimization of the behavior and a lack of education on what conduct constitutes hazing.

Culture of Bullying Prior to the Gatlinburg Incident

I find that a culture of bullying existed on the 2015-2016 boys' basketball varsity team prior to the Gatlinburg incident. In making this determination, my analysis was based on the definition referenced on the Tennessee Department of Education's website and utilized in the training received by HCDE and OHS administrators and staff,¹⁷ which states:

"Several definitions of bullying exist, but bullying always involves at least these elements (1) unwanted, aggressive behavior, (2) involving an actual or perceived imbalance of power, that is (3) repeated or occurring over a period of time."¹⁸

"Racking in" meets these elements.

First, while many students described "racking in" as horseplay, at least one of the freshmen subjected to it stated that he did not want it to occur. Players did not report the behavior because they did not want to be a "snitch" and they did not want it to get worse. Several targeted players described it as more of a game, while others were confused between whether it was a game or whether they were in fear of it happening to them. Part of "racking in" was the element of surprise, leaving targeted players in a constant state of apprehension regarding when it may occur.

Second, incidents always involved several upperclassmen, who were bigger and stronger by virtue of their age and maturity, targeting one freshman. Ultimately, it was commonly known and accepted that it would occur, and freshmen therefore accepted it as part of being on the team.

Finally, it was reported that the "rack" repeatedly occurred over an approximate four (4) week period.

¹⁷ See Section V(a) of my Analysis & Factual Findings for a discussion of the training.

¹⁸ Tennessee Department of Education website Bullying FAQs, citing the definition of bullying developed by Dan Olweus and used in the Olweus Bullying Prevention Program.

Despite receiving training and education on bullying at OHS, many players did not recognize it as bullying at the time that it occurred. In hindsight, however, they stated that they believed that the behavior did constitute bullying.

I had difficulty determining whether the conduct rose to the level of bullying as defined by Tennessee law and the HCDE Code of Conduct. Tennessee Code Annotated § 49-6-4502 includes in its definition of bullying a requirement that it "substantially interfere with a student's educational benefits, opportunities or performance." The Sample Bullying and Harassment Policy provided for Tennessee school districts by the Tennessee Department of Education also includes this element in its definition. Thus, the HCDE definition incorporates this language in its definition of bullying as well.

None of the freshmen subjected to "racking in" reported being physically injured. I also did not find any obvious indications during my interviews that the targeted players suffered academically or socially as a result of the "rack" specifically, given that school transfers and other issues may solely have been attributable to the Gatlinburg incident. Although I was unable to easily identify an immediate negative impact on the victims' educational environment, my review was during a limited window of time. Any future impact is impossible to predict. Ultimately, the behavior created an environment within the school that had the potential to interfere with the victims' educational environment. Moreover, there is a high likelihood that the behavior would have continued had the Gatlinburg incident not happened.

Knowledge of Coaches/Administrators of Culture

a. Coach and Administrator Backgrounds

OHS parents, players and administrators described Mr. Montgomery as a good coach and employee. Players considered him a mentor and/or father-figure and felt that he always had their best interests at heart. Mr. Montgomery utilized his own money to buy players dinner, help with tournament costs and often would drive them home from practice. Mr. Montgomery expected the players to act with integrity and instilled in the players that they were a family as members of the basketball team and should treat each other as such. Some accounts of Mr. Montgomery by players, however, were of him behaving more as a friend than an authority figure.

Players also described Mr. Williams, who served as a volunteer, as a mentor and/or father-figure. They considered him the disciplinarian of the two coaches and stated that he reinforced the same philosophy as Mr. Montgomery.

Administrators and staff described Mr. Nayadley as a good athletic director and employee who was committed to OHS. Colleagues said that he brought more structure to the athletics' program, evidenced through a Coaches Manual that he created and implemented. He often stayed after hours to assist with beautification of the school, such as hanging blinds. He maintained a high standard for student athletes. Athletes who got in trouble at school, for example, could not circumvent detention due to practice and instead had to serve school detention plus any other discipline through their team as a result of being late and/or missing practice.

b. Finding

Although I could not substantiate that Mr. Montgomery or Mr. Williams were aware of the hazing and bullying, they certainly were aware of excessive horseplay. It is undisputed that Mr. Montgomery and Mr. Williams had the best interests of their players at heart and that they took measures to address the horseplay. These measures included an exercise referred to as running suicides, running during practice, push-ups, squats and other physical activity. Despite these efforts, racking in and horseplay continued. Therefore, those efforts were not effective at addressing the behavior. Thus, other measures, such as benching a player or suspension, should have been considered.

Students interviewed by the HCSO, DCS and me, who were either the subject of or had direct knowledge of "racking in," stated that they never told coaches or administration about it. Regardless, based on the accounts, it is difficult to believe that, at a minimum, Mr. Montgomery was not aware of excessive horseplay occurring in the locker room. The following information supports a high likelihood of this knowledge:

- Mr. Montgomery's office was adjacent to the boys' locker room. It is unlikely that he would not hear the players banging around in the locker room, given the proximity of his office and the fact that they were separated by only a wall. One player stated that you could hear the players banging around in the locker room from outside the door.
- One player reported that Mr. Montgomery walked in several times when the lights were off, turned them on and told the team to knock it off.
- One player stated that they were disciplined by Mr. Montgomery and Mr. Williams for "the rack" and had to run suicides.
- Players reported that they often spoke about "the rack" in front of the coaches.
- Mr. Montgomery bought the players a TV for the locker room. Due to excessive horseplay, the TV was broken, and parents had to pay for the damage.
- School dismissed at 2:15 p.m. The freshmen began practice at 2:30 p.m., immediately after dismissal. The JV and varsity practice did not start until 4:00 p.m. because of Mr. Williams' work schedule. From 2:30 p.m. until 4:00 p.m., the players were therefore in study hall with Mr. Montgomery. Players described instances of little to no supervision in study hall. One instance, for example, involved two players getting into a heated verbal altercation.

Culture of Bullying and Hazing Prior to the 2015-2016 Season

I was unable to conclude whether a culture of bullying or hazing targeted at varsity freshmen players existed in the basketball program prior to the 2015-2016 season without expanding my investigation; however, it is highly likely that it did. Three (3) upperclassmen interviewed were

subjected to "racking in" as freshmen, which leads me to conclude it happened for at least three seasons under Mr. Montgomery. Any other accounts that it occurred were rumors or hearsay that could not be substantiated through my interviews of current players. To substantiate that information, I would need to interview former OHS basketball players.

Culture of Sexual Harassment Prior to the Gatlinburg Incident

The HCDE Code of Conduct states that "harassment (sexual, racial, ethnic, religious) includes words, gestures, threats, or any other conduct that is severe, pervasive or persistent and creates a hostile environment that interferes with or limits a student's ability to participate in or benefit from services, activities, or opportunities offered by a school." I did not find that a culture of sexual harassment existed in the basketball program prior to the Gatlinburg incident. The only account of misconduct discovered during my investigation was "racking in," which does not constitute sexual harassment. Because I did not find any other incidents of sexual harassment involving the basketball team, there was no evidence that school officials were deliberately indifferent to a culture within the program.

II. Gatlinburg and the Response of OHS and Central Office

Overview

Thirteen (13) players and three (3) chaperones went to the tournament in Gatlinburg. All of the freshmen who attended, with the exception of the physically injured victim, who declined to participate through his attorney, participated in the investigation. Of the remaining players on the trip, one (1) player declined to participate through his attorney and one refused to participate through his mother, who has a personal relationship with one of the coaches. I was unable to reach the three assailants. For players who did not participate in the investigation, I reviewed their HCSO and DCS interviews for information.

General Timeline of Events

The team arrived in Gatlinburg on December 19th. That evening, the four (4) freshmen players were dunked in the hot tub by upperclassmen. On December 20th, an upperclassman, with the assistance of two other players, poked two freshmen on the rectum, over clothing, with a pool cue. They did not sustain physical injuries. On December 21st, another freshman player was subjected to the same treatment. On December 22nd, the fourth freshman was subjected to the same treatment and, in this instance, sustained physical injuries that required hospitalization. During the early hours of December 23rd the assailants were driven back to Chattanooga. That morning, at 11:30 a.m., the team played its last game in the tournament. Immediately after the game the team returned to Chattanooga.

Conduct of the Assailants

It is undisputed that the players were wrestling and engaging in horseplay at the cabin during the trip, including dunking four (4) freshmen in the hot tub. It is also undisputed that all four (4) freshmen were subjected to the pool cue, with one resulting in serious physical injuries.

The placement of the pool cue on the players' rectums was not an accident. The assailant intended to place the cue in that location. While the players did not believe that any of the assailants intended to physically injure anyone, this was not a case of the main assailant poking other areas of the players' bodies and the cue slipping and hitting that area instead. Therefore, the assailants had the intent to bully, haze and sexually harass the victims.

I did not find any evidence that the HCDE or OHS administrators knew or should have known that these incidents would occur. Despite the fact that the incidents occurred over the course of three nights, none of the players in Gatlinburg told school officials or their parents. Additionally, there was no prior culture of sexual harassment on the basketball team, and the assailants had no prior history of reported similar conduct. While I found that Mr. Montgomery failed to take appropriate measures to address the excessive horseplay within the basketball program prior to the Gatlinburg incident, it is unlikely there was any way for Mr. Montgomery to know that the behavior would escalate to such an extreme.

Response of Coaches and Administrators

a. Physically Injured Freshman

With respect to the freshman who was physically injured, I found that the HCDE satisfied its Title IX obligations in its response. Mr. Montgomery and the other adults present in the cabin took immediate action to identify and eliminate the hostile environment and address its effects once on notice. Mr. Montgomery attempted to ascertain what happened, promptly sought medical care for the victim, and quickly notified his family. Once the police became involved, the coaches followed directives, kept the assailants separate from the victim pursuant to the detective's recommendations, and ultimately drove the assailants back to Chattanooga in the early morning hours of December 23rd. Mr. Montgomery also notified Mr. Nayadley that evening with current information. Thereafter, OHS suspended all three assailants.

b. Remaining Freshmen

I found that the pool cue incidents involving the remaining freshmen constituted hazing and bullying. It was a part of being brought onto the varsity team, specifically targeted at freshmen, and each freshman was held down by two upperclassmen.

I found that the incidents also constituted sexual harassment. I was unable to interview the assailants, but it is reasonable to assume that the conduct was sexual in nature, given the intended placement of the pool cue. The contact was unwanted, offensive and had the purpose or effect of intimidation and embarrassment. The victims had responses indicative of victims of sexual harassment that can be characterized as shame, anger, embarrassment, confusion, humiliation and disgust. Although the incident occurred only once with each freshman and the contact was over the clothing, it involved contact with an intimate body part with an object that can be used as a weapon. Also, as already noted, on each occasion the freshman victim was grabbed and held down by two players.

I found that Mr. Jarvis and Mr. Nayadley failed to take appropriate measures to address the effects of the incidents with the other freshmen once on notice because they did not notify the families of the freshmen and allowed the team play the next day. Mr. Jarvis and Mr. Nayadley did not violate any HCDE or OHS policies or procedures; however, this does not obviate their responsibilities as administrators to exercise appropriate judgment and take necessary measures to ensure the mental and physical well-being of the players who were the target of bullying, hazing and sexual harassment.

Both Mr. Jarvis and Mr. Nayadley received training on bullying, which includes identifying and responding appropriately to the behavior. Much of the behavior covered in the training on bullying also encompasses behavior that constitutes sex- and gender-based harassment. Thus, even though the training may not have delineated between the HCDE's Title IX obligations and obligations in responding to bullying, it included the necessary information to inform them, as administrators, of how to address those behaviors.

During the early morning hours on December 23rd, Mr. Montgomery and Mr. Nayadley became aware that prior pool cue incidents had occurred with the other freshmen in Gatlinburg with no resulting physical injuries. One of them was Mr. Nayadley's son. Once Mr. Nayadley learned that it happened to his son, he texted his son to check on him. Based on their text exchange, he believed that his son was safe.¹⁹ Mr. Nayadley had a close relationship with the coaches and trusted them to handle the situation appropriately. As a result, Mr. Nayadley did not contact the families of the other two freshmen to inform them of what occurred.²⁰ Mr. Montgomery stayed at the injured victim's side, leaving Mr. Nayadley as the most senior administrator in Gatlinburg to make the decision to notify families. One of the two families did not learn about what happened until after the team played in the tournament and were thirty minutes outside of Chattanooga on their way home. She only learned about it then because she contacted Mr. Williams to find out how the game went. The mother of the other player did not learn about it until her son told her when they were back in Chattanooga.²¹ Those families were therefore unable to make an informed decision on the well-being of their child and whether they wanted to come and get their sons from Gatlinburg. One mother expressed that had she known what happened, she would have immediately gone to Gatlinburg and brought her son home.

Mr. Jarvis was the ultimate decision-maker on playing in the tournament the morning after the incident occurred. His decision largely was influenced by the reports he received from Mr. Nayadley. Mr. Nayadley felt the players were ready to play and wanted to play. None of the players interviewed stated that they wanted to play. One player described the team as "sluggish." They were tired from a long and stressful evening, and their minds were with the injured victim.

¹⁹ Mr. Nayadley did not stay in the same cabin as the team because he was attending the tournament as a parent of a player. Cell service was poor which made it difficult to make phone calls. Thus, the best way to contact someone was via text.

²⁰ Mr. Nayadley may have reported the pool cue incident to one of the freshman's parents; however, I could not verify this information with that parent.

²¹ Some of the players stated that they did not tell their parents what was going on after the incident occurred with the injured player that night because police were at the cabin and they were unsure what they were allowed to talk about to other people.

In allowing the team to play, Mr. Jarvis rationalized that the remaining players should not be punished for the conduct of three. Had the team come back from Gatlinburg and an investigation commenced into the culture of the program, OHS would have discovered that hazing and bullying were occurring in the locker room and that additional upperclassmen were involved in hazing and bullying. While I do not know what discipline would have been appropriate for those players had this been discovered in January, there certainly was evidence of behavior that would rise to the level of a disciplinary infraction that was not considered.

Mr. Nayadley informed Mr. Steve Holmes²² from Central Office that he would ensure the boys were physically and mentally ready to play in the tournament. Mr. Nayadley stated that in making this determination, he observed the boys warming up, and they were "getting after it." Every player interviewed, however, said that they were worn out and confused as to why they were playing. Mr. Nayadley also spoke to the players, although there were mixed accounts as to whether that occurred before or after the game. The players, with the exception of one, said that Mr. Nayadley did not talk to them until after they played. The player that stated he spoke to them prior to the game said that he told them "let's finish the game out" as they were getting their shoes on to play. Regardless of when Mr. Nayadley spoke with the team, ultimately it was clear to the team that they were going to play despite what had occurred. In having the team play, Mr. Nayadley ran the risk of sending a message to the freshmen players that the conduct was acceptable.

When Mr. Nayadley spoke to the team, he told them that the behavior was not acceptable and that the three assailants would be kicked off the team. Mr. Nayadley pulled each freshman aside to tell them the conduct would not be tolerated. He told the players that he would talk with their parents about what occurred.

By not immediately contacting the families and in allowing the team to play, Mr. Jarvis and Mr. Nayadley failed to take appropriate measures to address the effects of the hazing, bullying and sexual harassment of the freshmen players.

c. After the Gatlinburg Incident

All of the players' parents on the basketball team that I spoke with expressed frustration at the lack of response from OHS and the HCDE after the Gatlinburg incident. While some of the boys were not subjected to hazing, bullying and/or sexual harassment, they did witness a traumatic event, and thereafter, their season was cancelled, which had a profound impact on them. Someone from OHS or HCDE should have reached out to these families to extend support. One guidance counselor did talk with a few of the boys that he had a relationship with, to let them know he was available if they needed to talk. By in large, though, there was no concerted, organized effort to reach out to families.

I relayed this information to Mr. Bennett, who attempted to convince Mr. Jarvis of the necessity of speaking to these families. I also spoke to Mr. Jarvis and attempted to explain the need. Mr. Jarvis failed to understand the need to reach out to these families because "there was only one

²² Mr. Holmes is the secondary operations director for the HCDE.

victim that he was aware of." When I explained that many students have transferred, are in need of counseling services and so on, Mr. Jarvis continued to be unable to understand why parents should be contacted unless he had news for them regarding the upcoming basketball season. Ultimately efforts with Mr. Jarvis were exhausted, and the Title IX Coordinator began reaching out to the families.

III. The Culture of the 2015-2016 OHS' Football Program

Overview

I expanded my investigation into the OHS football program due to the following:

1. Several players stated that "racking in" began when the football season ended and the three assailants began practicing with the basketball team;
2. One assailant, in his interview with HCSO and DCS, stated that it happened to him on the football team; and
3. Students stated that they heard rumors that it occurred in football.

The football program has a freshmen, JV and varsity team. Mr. Mac Bryan serves as the head coach of the JV and varsity teams. Mr. Doug Greene and Mr. J.D. Dunbar serve as paid assistant coaches. All of the coaches fully cooperated with the investigation.

There were over 100 students on the OHS football roster during the 2015-2016 season. In the interest of time, I attempted to contact the parent or guardian of all sophomores on the football team because, as the youngest members of the varsity team, they would have been the most likely subjects of hazing and/or bullying. There were thirty-one (31) sophomores on the roster and two (2) more identified through interviews. Only four (4) of those players agreed to participate.²³ The remaining parents or guardians of the players would not allow their sons to participate in the investigation or could not be reached despite repeated attempts. There were a few basketball players I interviewed who also played football, which enabled me to confirm certain information about the program.

Both the lack of participation in the investigation and the fact that two players declined to participate through attorneys was surprising. Of those I did interview, I asked why players were unwilling to participate. I also asked parents or guardians I spoke with by phone why they were unwilling to allow their sons to participate. Ultimately, I deduced from these conversations that the unwillingness was a result of frustration over the negative depiction of OHS in the media, parents feeling confident that their son had not been subjected to similar conduct based on conversations with their son about the Gatlinburg incident, parents not wanting to subject their children to an interview, concern that the behavior of the assailants would be attributed to the football program, and a belief that the investigation was a "witch hunt." I did not receive any information indicating a fear of retaliation.

²³ Two (2) of those players were the assailants in the Gatlinburg incident therefore I was unable to interview them.

In addition to witness interviews, I toured the locker room area for both the freshmen and varsity football teams as well as the practice fields.

Finding

I did not find that a culture of hazing, bullying or sexual harassment existed in the football program during the 2015-2016 football season. Although I was unable to interview a significant number of sophomore players on the team, the credibility of the players that I did interview, the consistency of statements regarding the program from players, parents and coaches, and the following information supports this finding:

- The freshmen team is kept entirely separate from the JV and varsity teams. They maintain separate locker rooms, practice times, and schedules. This is by design as Coach Bryan's philosophy is that freshmen are not mature enough physically or emotionally to practice or interact with upperclassmen.
- The varsity team practice starts at 2:30. The coaches are mindful of not allowing players to have any free time between the end of school and the start of practice. Players cannot access the locker room to get ready for practice until it is unlocked by a football coach who is then around to supervise. At the end of practice, players again cannot access the locker room until it is unlocked by a coach. Two coaches are always assigned to the locker room after practice. Coach Bryan and Coach Greene have offices in the locker room.
- Players and coaches reported that Coach Bryan and his staff maintain a strict program, and players are held to a high standard. If a player gets in trouble at school, engages in horseplay, is tardy for practice, is reported as having behavior issues in the classroom, etc., they are subject to "afternoon delights"²⁴ led by Coach Dunbar.
- Through grad focus,²⁵ the coaches have made it a point to discuss current events involving athletes and sexual misconduct or other social issues that may affect them.

Based on the foregoing, there was no direct evidence of a culture of hazing, bullying, or sexual harassment. The structure of the football program does not support such conduct occurring in the presence of coaching staff. Freshmen are intentionally kept completely separate from the JV and varsity teams. They have separate locker rooms and practice on different fields. Players always are supervised, and the coaches do not tolerate horseplay or conduct that could lead to

²⁴ Afternoon delights consist of running drills and other exercises in addition to practice.

²⁵ HCDE students who are in exceptional education and under an Individualized Education Plan (IEP) must receive a certain amount of direct instruction each week. Each school has discretion in how to provide this instruction. OHS chose to create grad focus which is a block that meets three times a week for the non-IEP students. Through grad focus, students may elect coursework ranging from art to foreign language. OHS also utilized this time for coaches to have time with student athletes in a classroom setting while they were in season. During that time, the football program provided cyber-bullying training through i-SAFE, ACT prep and had students write about current events. Although the football players who are not in exceptional education do not participate, the majority of the players are in grad focus.

fights among teammates. Thus, when conduct occurs that has the potential to escalate, it is dealt with quickly and effectively.

IV. Other Issues

During my investigation, I discovered other operational issues that I provided to Mr. Bennett for disposition.

V. OHS Policies, Procedures & Educational Programs Regarding Bullying, Hazing and Sexual Harassment

Bullying

a. Overview

The HCDE mandates bullying training for all teachers and staff. Each school has discretion on the implementation of training and then must report back to the Central Office.

One option provided to the schools within the HCDE is training through the Olweus Bullying and Prevention Program ("OBPP"). OBPP "prevents or reduces bullying in elementary, middle, and junior high schools" and "deals with bullying at the schoolwide, classroom, individual and community levels."²⁶ OBPP is research validated, and recognized by the U.S. Department of Education.²⁷

Ms. Karen Glenn serves as the STARS²⁸ Director for HCDE. In that role, she provides Olweus training for the schools and oversees school climate. Each school that opts to utilize Olweus training can work with Ms. Glenn to initiate training specific to their school. First, schools implement a student survey to assess school climate. Then, based on the result of the survey, a core team receives initial training and discusses implementation of the school-wide training. Although the training elements are the same, each school can modify training to reflect their own culture. Ms. Glenn's Olweus training provides in-depth instruction on identifying, preventing and responding to bullying. It also discusses the relationship to other civil rights' violations, such as discrimination and sex- and gender-based harassment.

OHS utilized Olweus training and worked with Ms. Glenn prior to the 2015-2016 school year. Data from the 2014-2015 surveys was presented to the eight OHS staff members identified as the core team during their full day of training. In August 2015, the entire staff at OHS was trained during teacher in-service. As a result of the core team's analysis of the culture at OHS, they developed "Give a Hoot" posters to raise awareness and prevention of bullying. They also created anti-bullying posters that were prominently displayed in every classroom and throughout

²⁶ Olweus Bullying Prevention Program Brochure.

²⁷ HCDE website.

²⁸ Students Taking a Right Stand (STARS) "is a school-based program dedicated to strengthening the learning environment by addressing social issues such as bullying and substance abuse." STARS website. One program offered is Olweus training.

the building. Staff were also given quick-tip intervention cards with specific procedures for responding to observed bullying behavior. In addition, OHS teachers taught at least three lessons on an aspect of bullying or other behavior that could negatively affect students throughout the school year. Ms. Glenn stated that the training at OHS was among the best received trainings of all of the schools she worked with that year.

In addition to Olweus training, OHS utilized training provided through STARS for its students. OHS identified twelve (12) students²⁹ who were considered "change agents" to attend one day training on school climate that included bullying awareness and prevention. At the end of the training, the group created a plan to combat prevalent issues including bullying and raise awareness at OHS for its students. Included in their prevention efforts were PSA announcements giving encouraging quotes of the day, making an effort to sit with students sitting alone at lunch, and acknowledging students for positive actions. OHS students also visited elementary schools promoting the "Kindness Matters" campaign for 5th graders and participated in the multi-school Youth Conference for middle school students encouraging positive behavior.

At the end of the academic year, STARS commended OHS on their work in an email to administrators and staff who led the program.

Finally, the HCDE mandates training on cyber-bullying for all students through a program called i-SAFE. This program provides educators with age-appropriate, grade specific e-Safety curriculum and includes professional development for instructors. OHS provided i-SAFE to its students in wellness or grad focus and tracked students who have completed the curriculum.

b. Finding

The HCDE has made significant efforts to combat bullying. Olweus training is thorough and tailored to meet each school's specific culture and climate. Statistics on bullying are collected each year by Ms. Glenn and reported to the Office of Civil Rights. Ms. Glenn also administers climate surveys for each school for parents, teachers and students. The results of the surveys are shared with school administration so that needs are identified and goals established for strengthening the school learning environment.

As noted, all schools are not required to utilize Olweus training. I could not find a consistent mechanism in place to ensure those schools provide sufficient training to staff; thus I cannot say that all schools are receiving adequate training in this regard.

OHS has gone above and beyond HCDE mandate in its efforts to combat bullying. OHS provided robust bullying training for all of its teachers and participated in STARS for its students. OHS's efforts are evident throughout the school grounds with posters and pamphlets.

²⁹ Three (3) of the twelve (12) students were football players.

Hazing

I found that the HCDE and OHS efforts towards training on hazing are deficient. Although the Code of Conduct addresses hazing, students do not understand what actions might constitute hazing, which demonstrates a lack of education in this area. It appeared some of the OHS administrators had a "that doesn't happen here" approach to hazing and failed to see the value in proactive measures through education and training for staff, teachers and students.

Sexual Harassment

a. Overview

I encountered significant difficulty in determining what efforts were being made with respect to HCDE meeting its Title IX obligations. I first interviewed the designated Title IX Coordinator, Ms. Marsha Drake, as well as other HCDE administrators. My initial determination was that very little was being done by the HCDE to meet its obligations based on these interviews. It was only after I spoke with Mr. Bennett about these issues that I learned that Ms. Glenn was doing a lot of work that would satisfy some of the HCDE's Title IX obligations. This discovery was very concerning because, if it was difficult for me to find out this information, it certainly would be difficult for a parent or student to locate.

b. Analysis

The Office of Civil Rights states the HCDE "must designate at least one employee to coordinate their efforts to comply with and carry out their responsibilities under Title IX These designated employees are generally referred to as Title IX coordinators."³⁰ The HCDE designated a Title IX coordinator, Ms. Drake.

The Title IX coordinator must have the "qualifications, training, authority and time" to address all complaints throughout the school district implicating Title IX.³¹ Ms. Drake has not received adequate training on Title IX. She also has a host of responsibilities outside of those as a Title IX coordinator. Thus, the HCDE designated her as coordinator without the consideration of the appropriate infrastructure, support and training.

The Title IX coordinator is "responsible for coordinating the school district's responses to all complaints involving possible sex discrimination. This includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate."³² Although Ms. Drake serves as the Title IX coordinator, many of these responsibilities are being carried out by Ms. Glenn.³³ In addition, Ms. Drake was unaware that Ms. Glenn was carrying out these duties.

³⁰ Office of Civil Rights, Dear Colleague Letter on Title IX Coordinators, April 24, 2015.

³¹ *Id.*

³² *Id.*

³³ The climate surveys utilized by Ms. Glenn assess climate on a variety of issues, but fall short with respect to sexual misconduct. Ms. Glenn does collect data from each school that includes information regarding reports of bullying based on sex or gender.

Under Title IX, the HCDE is required to provide mandatory training for staff and students. HCDE training efforts are as follows:

- Annually, all of the HCDE administration and staff must acknowledge review of the Harassment/Sexual Harassment and Discrimination Board Policy. There is no accompanying training.
- The schools utilizing Olweus training also receive training on conduct that constitutes sex-and gender-based harassment, including how to respond to these incidents once a student or school official is on notice of the conduct.
- In 2015, Ms. Glenn provided an exercise for the HCDE administration to further illustrate the interplay between bullying and other civil rights violations, including sex- and gender-based harassment.

The HCDE needs to further bolster any existing training to include HCDE's Title IX obligations and mandate such training for all students and staff. In addition, the HCDE needs to ensure those schools which do not opt to utilize Olweus training are providing adequate training which satisfies its Title IX obligations.

The HCDE is required to ensure that all "persons involved in implementing . . . grievance procedures must have training or experience in handling complaints of sexual harassment and sexual violence." I did not find evidence that building administrators, who are tasked with investigating reports, receive training or experience in these matters. Likewise, I did not find evidence that other administrators involved in the process receive training or have experience in these matters. While many of them may have gone through adequate training, there is no tracking mechanism in place to ensure that it occurs.

Finally, under Title IX, the HCDE is required to provide a prompt and equitable response to complaints, support complainants through the provision of interim measures, take action to identify and eliminate a hostile education environment, prevent its recurrence, and address its effects for individual complainants and the broader school community.³⁴ The HCDE is making efforts in this regard; however, they are disjointed and therefore difficult to ascertain. They are being undertaken by Ms. Glenn, who is not the designated Title IX coordinator, and funneled up through building administrators who have not been adequately trained on the HCDE's Title IX obligations. As a result, it is difficult to determine whether the HCDE is satisfying its obligations in this regard.

c. Finding

I found that the HCDE's and OHS's efforts towards training on sex-and gender-based harassment, including obligations of the school district in responding to those complaints under Title IX, are inadequate in some areas, disjointed in others and overall in need of improvement. The issues that I have discovered in this regard did not impact Mr. Montgomery's ability to

³⁴ Office of Civil Rights, Dear Colleague Letter, April 4, 2011.

appropriately respond to the injured freshman in Gatlinburg; however, they are issues that must be addressed to ensure overall compliance by the HCDE with Title IX going forward.

VI. OHS

As I previously noted, I spent the better part of seven (7) weeks at OHS with unfettered access to the school. The environment at OHS is a positive one, and there certainly is more good than bad happening within the school. Teachers I spoke to were dedicated to their profession and students and had profound loyalty to the school.³⁵ Students also spoke very highly of their experience at OHS, including the students who were in Gatlinburg. Students and teachers alike felt that the media's depiction of the school was unfair and that the Gatlinburg incident was an isolated incident which was not an accurate reflection of the school or its athletics' program. My observations during my time there were consistent with these sentiments.

RECOMMENDATIONS

During the course of my investigation, new policies and procedures were adopted, which may include some of these recommendations. Also, because training efforts are disjointed, some of the following recommendations may be in place, but difficult to ascertain. Finally, my recommendations should not be construed as meaning that had these recommendations been implemented prior to the Gatlinburg incident, the actions taken in Gatlinburg would not have occurred.

Training and Education

1. Provide and mandate training to all HCDE and school administrators that includes:
 - a. HCDE's Title IX obligations;
 - b. How to identify and address bullying, hazing, sex- and gender-based harassment ("prohibited behavior");
 - c. The proper reporting structure once personnel are on notice of prohibited behavior; and
 - d. Repercussions for failure to report incidents of prohibited behavior.
2. Provide and mandate training and education to HCDE staff and teachers regarding prohibited behavior. Consider providing this training to all school sites during teacher in-service at the beginning of the school year. This training includes:
 - a. HCDE's Title IX obligations;
 - b. How to identify and address prohibited behavior;
 - c. Where to report prohibited behavior once on notice of it; and
 - d. Repercussions for failure to report incidents of prohibited behavior.

³⁵ I was directed to contact teachers who may have felt differently about the school environment and administration. I attempted to interview those individuals but was unsuccessful despite repeated attempts.

3. Expand educational efforts on bullying and cyber-bullying for students to also include education on hazing and sex- and gender-based harassment.
4. Provide bystander training for students and establish a student peer-based leadership program. Consider programs such as Step Up! to assist with these efforts.

HCDE's Title IX obligations

5. Clarify the roles and responsibilities of Ms. Karen Glenn and Ms. Marsha Drake and make any necessary changes to appropriately designate a Title IX coordinator for the HCDE.
6. Properly resource the Title IX coordinator to be able to implement policies, procedures and practices, which include:
 - a. Appointing deputy Title IX coordinators at each school site for intake, support and case management. These may already be contemplated under the newly adopted policy as building administrators and/or school officials;
 - b. Providing appropriate training opportunities for the Title IX coordinator and deputy Title IX coordinators; and
 - c. Provide appropriate support and authority for the Title IX coordinator and deputy Title IX coordinators to implement necessary interim measures for complainants.
7. Appropriately train any building administrator and/or school official designated for investigating matters involving sexual harassment to ensure adequate, reliable and impartial investigation of complaints. Training should be trauma-informed and include information regarding conducting an investigation during a pending criminal investigation.
8. Ensure that all forms of resolution to disciplinary matters implicating Title IX are clearly documented to demonstrate actions were taken to eliminate a hostile education environment, prevent its recurrence and address its effects on the complainant and the school community. Maintain appropriate complaint logs and records of all reports and steps taken to eliminate, prevent and address the effects of the prohibited conduct.
9. Train guidance counselors on available and comprehensive victim services to all students affected by sexual harassment or sexual violence. Consider designating an "on call" guidance counselor at each site to assist victims when needed.
10. Train all School Resource Officers on the HCDE Title IX obligations.
11. Train the HCDE school board on the HCDE's Title IX obligations.

12. Review disciplinary and grievance procedures to ensure they are consistent with the law and guidance. This may include modifications to the newly adopted policy, or the establishment of a complainant's bill of rights, which includes:

- a. A time frame for all major stages of the procedures including the time frame within which (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal. The policy also should provide that both parties will receive periodic status updates;
- b. Clarifying that throughout the investigation, including any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and respondent must be afforded similar and timely access to any information used at a hearing;
- c. Notifying both parties, in writing, of the outcome of the complaint and appeal concurrently, to the extent allowed by law; and
- d. Notifying a complainant of the right to file a criminal complaint.

13. Conduct a review of all disciplinary matters implicating Title IX since 2011; create a log of those instances and how they were handled; and engage in any remedial efforts deemed necessary as a result of the review.

14. Conduct appropriate periodic climate surveys or assessments to evaluate the effectiveness of these measures.

Athletics

15. Ensure that all athletics' personnel, including volunteer coaches, are appropriately trained on an annual basis regarding Title IX obligations, hazing and bullying.

16. Create and maintain a zero tolerance culture for prohibited behavior that includes consistent enforcement and discipline within athletics at OHS.

17. Establish a registration process for volunteer coaches maintained in a centralized location that includes a system for volunteer coaches to acknowledge training on hazing, bullying, and sex- and gender-based harassment, school-sponsored overnight travel procedures and protocol, and mandatory reporting.

18. Create standards for volunteer coaches in line with those expected of stipend coaches.

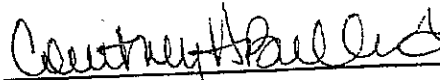
19. Clarify the roles and responsibilities of Athletic Directors in handling reports of prohibited behavior within athletics.

Other

20. Ensure accountability for failures to report by HCDE employees.

- 21. Develop procedures and protocol for addressing incidents of prohibited behavior that occur on school-sponsored overnight trips. Identify decision-makers for notifying parents, returning home early, and cancelling games.
22. Provide detailed periodic reports to the school board regarding the implementation of these recommendations.

Respectfully submitted,



Courtney H. Bullard

Spears, Moore, Rebman & Williams, P.C.

Addendum A

1. Student A and parent(s)
2. Student B and parent(s)
3. Student C and parent(s)
4. Student D and parent(s)
5. Student E
6. Student F and parent(s)
7. Student G and parent(s)
8. Student H
9. Student I
10. Student J
11. Student K and parent(s)
12. Student L
13. Student M
14. Student N
15. Student O and parent(s)
16. Student P and parent
17. Student Q
18. Student R
19. Student S
20. Matthew Henson
21. Ken Buchanan
22. Jensen Morgan
23. Rocky Chavis
24. Jesse Nayadley
25. Jim Jarvis
26. Sylvia Hutsell
27. Chris Brown
28. Stephanie Allen
29. Wendell Weathers
30. Lee McDade
31. Wayne Rich
32. Doug Greene
33. Donald Mullins
34. James (J.D.) Dunbar
35. Steve Holmes
36. Mac Bryan
37. Marsha Drake
38. Grey Briggs
39. Officer Nathan Sampley
40. Karen Glenn

ADDENDUM B

1.	HCDE Policies & Procedures
2.	HCDE Revised Board Policy 6.304
3.	HCDE Training on Abuse Reporting Procedures 4.14.16
4.	2015-2016 HCDE School Calendar
5.	HCDE High School Administrative Policy & Procedure Manuals
6.	HCDE Volunteer Form
7.	2015-2016 HCDE Hardship Report
8.	HCDE Bullying Policies
9.	2015-2016 HCDE Bullying Compliance Report for OCR
10.	HCDE Form Elementary, Middle and High School Climate Surveys
11.	HCDE Non-Faculty Volunteer Coach Procedures for Setup
12.	HCDE Secondary School Counselor Manual
13.	HCDE Form Request for Early Approval for Field Experience
14.	HCDE Consent for Athletic Participation and Medical Care
15.	HCDE Disciplinary Referral Form
16.	HCDE Parent Complaint Form
17.	TN Department of Education Civil Rights and Bullying Compliance FAQs
18.	Tennessee Department of Education Sample Bullying and Harassment Policy
19.	stopbullying.gov website
20.	Personnel Records of Avery Rollins, Jesse Nayadley and Andre Montgomery
21.	Transcript from the Preliminary Hearing for Karl Williams, Andre Montgomery and Allard Nayadley in the Juvenile Court of Hamilton County
22.	Timeline of events from Steve Holmes
23.	Bullying and Prevention Training for HCDE Assistant Principals Powerpoint 9.2014
24.	2015 Dear Colleague Training Activity for Assistant Principals 9.9.14
25.	Bullying Is Not Tolerated (B.I.N.T.) Investigation Form
26.	OHS Teacher Contact List
27.	OHS Web Page
28.	OHS Map
29.	OHS Hardship Transfers
30.	2015-2016 OHS Boys' Basketball Roster
31.	2015-2016 OHS Boys' Basketball Schedule
32.	Smoky Mountain Classic Basketball Schedule 2015
33.	2016 Chattanooga Elite Roster
34.	2015-2016 OHS Football Roster
35.	2015-2016 OHS Football Schedule
36.	OHS Student Handbook 2015-2016
37.	OHS Faculty Handbook 2015-2016
38.	OHS Coaching Handbook 2015
39.	OHS Student Handbook 2014-2015
40.	OHS Code of Acceptable Behavior and Discipline
41.	OHS Registration Packet

42.	OHS i-SAFE Curriculum Materials OHS Participation Request 12.7.15
43.	General Demographics of Specific OHS Students
44.	Fall 2015 Class Schedules of Victims and Assailants
45.	Meeting Notes re: Gatlinburg 1.4.16
46.	Disciplinary records of assailants
47.	Olweus Pamphlet
48.	Olweus Bullying and Prevention Program Brochure
49.	OHS Olweus/STARS Bullying Prevention Brochure
50.	OHS OASIS curriculum materials
51.	Email from Gregory Gwen to administrators and staff re: STARS
52.	OHS 2013 Tennessee School Climate Survey Past 30-day Personal Alcohol, Tobacco, and Other Drug Use Prevalence
53.	OHS 2013 Parent Survey
54.	OHS 2013 Teacher Survey
55.	OHS Tennessee S3 Student Survey School Summary 2013-2014
56.	OHS Sign-in Sheet for Initial Core Training
57.	OHS Olweus Core Team Powerpoint Presentation 11.11.14
58.	OHS Expectation Poster – Rules on Bullying
59.	OHS Thanks for Giving a Hoot Bullying Poster
60.	OHS On the Spot Bullying Intervention Cards
61.	OHS Olweus Staff Training Powerpoint Presentation 8.7.15
62.	OHS Sign-in Staff Training 8.7.15
63.	STARS website
64.	HCSO and DCS Interviews (12) of Nayadley, Jarvis, Montgomery, victims and witnesses
65.	Newspaper Articles from 12/30/15 – 07/01/16

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

Bullard's Recommendation	Actions Taken	Actions to be Taken
<p>B1 Provide and mandate training to all HCDE and school administrators that includes:</p> <ul style="list-style-type: none"> a. HCDE's Title IX obligations b. How to identify and address bullying, hazing, sex- and gender-based harassment ("prohibited behavior") c. The proper reporting structure once personnel are on notice of prohibited behavior d. Repercussions for failure to report incidents of prohibited behavior. 	<ul style="list-style-type: none"> b. All schools will be Olweus trained (82% already trained, remaining 18% will be trained by June 2017). Training focus is on identifying and addressing bullying; training will be enhanced through online course option c. All administrators have been trained on reporting guidelines (7/28/16). During August PD, all were given "protocol for reporting child abuse" card. d. Because employees are required by law to report, consequences of not doing so become a misdemeanor offense. 	<ul style="list-style-type: none"> a. A Title IX online course has been identified and training will be coordinated pending School Board approval.
<p>B2 Expand educational efforts on bullying and cyber-bullying for students to also include education on hazing and sex- and gender-based harassment.</p>	<p>Olweus training includes expanded approach to incorporate hazing and sex- and gender-based harassment. iSafe training through PE classes address cyberbullying.</p>	<p>Emphasis on enhancing the iSafe training will be explored to include hazing, sex- and gender-based harassment. (Nancy Reed)</p>
<p>B3 Provide bystander training for students and establish a student peer-based leadership program. Consider programs such as Step Up! to assist with these efforts.</p>	<p>A total of 579 secondary student leaders from both middle and high schools were trained in the TDOE Youth Summit and Move2Stand over the course of eight days in September, 2016. The training covered an all-inclusive approach to building a school community addressing bullying, empathy, bystander response, etc. Follow-up meetings have been requested of participating leadership teams to reinforce strategies in fostering a healthier learning environment. Strategies are also being incorporated in the SSAC</p>	

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

B4	<p>Clarify the roles and responsibilities of Ms. Karen Glenn and Ms. Marsha Drake and make any necessary changes to appropriately designate a Title IX coordinator for the HCDE.</p>	<p>Per September, 2016 School Board meeting, Karen Glenn was named the Title IX Coordinator. Website has been updated to reflect this change.</p>	
B5	<p>Properly resource the Title IX coordinator to be able to implement policies, procedures and practices, which include:</p> <ul style="list-style-type: none"> a. Appointing deputy Title IX coordinators at each school site for intake, support and case management. These may already be contemplated under the newly adopted policy as building administrators and/or school officials; b. Providing appropriate training opportunities for the Title IX coordinator and deputy Title IX coordinators; and c. Providing appropriate support and authority for the Title IX coordinator and deputy Title IX coordinators to implement necessary interim measures for complainants. 	<ul style="list-style-type: none"> a. Deputy Title IX point person has been identified on every school campus. Online training model has been identified to certify staff for intake, support, and case management to include teachers, school-based classified staff, administrators, coaches, volunteer coaches, bus drivers, Central Office administrators and School Board Members b. Online training will be provided pending board approval. c. Support and authority has been provided through training guidelines and mandates (July 28, October 20) on reporting obligation, bullying prevention, and Title IX policies. A new HCDE investigation form has been created. 	
B6	<p>Appropriately train any building administrator and/or school official designated for investigating matters involving sexual harassment to ensure adequate, reliable and impartial investigation of complaints.</p> <p>Training should be trauma-informed and include information regarding conducting an investigation during a pending criminal investigation.</p>	<p>A new HCDE investigation form has been created by Operations Directors and shared with principals at October 20 meeting.</p>	<p>Title IX online course has been identified and training will be scheduled pending board approval.</p> <p>Trauma-informed procedures are being explored through Coordinator of School Counselors</p>

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

B7	<p>Ensure that all forms of resolution to disciplinary matters implicating Title IX are clearly documented to demonstrate actions were taken to eliminate a hostile education environment, prevent its recurrence and address its effects on the complainant and the school community. Maintain appropriate complaint logs and records of all reports and steps taken to eliminate, prevent and address the effects of the prohibited conduct.</p>	<p>Documentation will be made on newly developed HCDE investigation form and provided principals at October 20 meeting.</p> <p>Examples of procedures for eliminating hostile environment have been provided to all Operations Directors for distribution to building administrators as needed.</p>	
B8	<p>Train guidance counselors on available and comprehensive victim services to all students affected by sexual harassment or sexual violence. Consider designating an "on call" guidance counselor at each site to assist victims when needed.</p> <p>Train all School Resource Officers on the HCDE Title IX obligations.</p>	<p>School counselors have been provided "Stewards of Children" child abuse training format offered through the Child Advocacy Center. Training will focus on certified staff and any non-faculty coaches.</p>	Training for SROs TBA
B9	<p>Train the HCDE School Board on the HCDE's Title IX obligations.</p>		Online training model is being explored for School Board Members
B10	<p>Review disciplinary and grievance procedures to ensure they are consistent with the law and guidance. This may include modifications to the newly adopted policy, or the establishment of a complainant's bill of rights, which includes:</p> <ol style="list-style-type: none"> a. A time frame for all major stages of the procedures including the time frame within which <ol style="list-style-type: none"> i. the school will conduct a full investigation of the complaint; ii. both parties receive a response regarding the outcome of the complaint; and 	<p>Principals have been notified of the following TDOE 2016 mandates as follows:</p> <ul style="list-style-type: none"> • For all reports of harassment, intimidation, bullying, and cyber-bullying, an investigation must be initiated within a 48-hour time frame. • A twenty (20) day mandate is required to initiate appropriate intervention for all confirmed harassment, intimidation, bullying or cyber-bullying cases. • There will be a procedure for referral for appropriate counseling and/or support services when deemed necessary by principal. 	

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

	<p>iii. the parties may file an appeal. The policy also should provide that both parties will receive periodic status updates;</p> <p>b. Clarifying that throughout the investigation, including any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and respondent must be afforded similar and timely access to any information used at a hearing;</p> <p>c. Notifying both parties, in writing, of the outcome of the complaint and appeal concurrently, to the extent allowed by law; and</p> <p>d. Notifying a complainant of the right to file a criminal complaint.</p>	<ul style="list-style-type: none"> • Principal will immediately inform the parent/legal guardian of the student(s) involved and the availability of counseling or support service when deemed necessary. b. both parties will have opportunity to present witnesses/pertinent evidence (if applicable) c. notification will be provided in the means most effective to the parents (email, phone, etc.) Appeal procedures are noted in the Code of Acceptable Behavior and Discipline. d. A criminal complaint option would be filed with local law enforcement as they are a separate governing body. 	
B11	<p>Conduct a review of all disciplinary matters implicating Title IX since 2011; create a log of those instances and how they were handled; and engage in any remedial efforts deemed necessary as a result of the review.</p>	<p>Information is being collected for past four years to assess and determine if remedial efforts are necessary. Incidents past the 2012-13 school year are unavailable.</p>	<p>A log will be created reflecting a review of previous Title IX incidents.</p>
B12	<p>Conduct appropriate periodic climate surveys or assessments to evaluate the effectiveness of these measures.</p>	<p>Climate surveys are required prior to Olweus training and as a mandate for all Title Schools</p>	<p>Enhancement of school climate surveys is being explored</p>
B13	<p>Ensure that all athletics' personnel, including volunteer coaches, are appropriately trained on an annual basis regarding Title IX obligations, hazing and bullying.</p>		<p>HCDE Athletic Code of Conduct is being created with input from coaches</p>
B14	<p>Create and maintain a zero tolerance culture for prohibited behavior that includes consistent enforcement and discipline within athletics at OHS.</p>		<p>Zero tolerance culture will be incorporated in HCDE Athletic Code of Conduct.</p>

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

B15	Establish a registration process for volunteer coaches maintained in a centralized location that includes a system for volunteer coaches to acknowledge training on hazing, bullying, and sex- and gender-based harassment, school-sponsored overnight travel procedures and protocol, and mandatory reporting.		Registration process and guidelines and expectations for volunteer coaches will be included in the HCDE Athletic Code of Conduct.
B16	Create standards for volunteer coaches in line with those expected of stipend coaches.		Guidelines will be included in the Athletic Code of Conduct
B17	Clarify the roles and responsibilities of Athletic Directors in handling reports of prohibited behavior within athletics.		Guidelines will be included in HCDE Athletic Code of Conduct
B18	Ensure accountability for failures to report by HCDE employees.	Failure to report offenses becomes a misdemeanor offense.	
B19	Develop procedures and protocol for addressing incidents of prohibited behavior that occur on school-sponsored overnight trips. Identify decision-makers for notifying parents, returning home early, and cancelling games.	Per Board Policy 4.301, the certified teacher chaperone must report to his/her principal of any serious or accidental incidents. The principal will designate the decision-making for contacting parents, returning home early, and/or cancelling the event.	
B20	Provide detailed periodic reports to the School Board regarding the implementation of these recommendations.	First report will be provided at October School Board Meeting. Updates will be provided quarterly.	

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

Bullard's Recommendation	Actions Taken	Actions to be Taken
<p>B1 Provide and mandate training to all HCDE and school administrators that includes:</p> <ul style="list-style-type: none"> a. HCDE's Title IX obligations b. How to identify and address bullying, hazing, sex- and gender-based harassment ("prohibited behavior") c. The proper reporting structure once personnel are on notice of prohibited behavior d. Repercussions for failure to report incidents of prohibited behavior. 	<ul style="list-style-type: none"> b. All schools will be Olweus trained (82% already trained, remaining 18% will be trained by June 2017). Training focus is on identifying and addressing bullying; training will be enhanced through online course option c. All administrators have been trained on reporting guidelines (7/28/16). During August PD, all were given "protocol for reporting child abuse" card. d. Because employees are required by law to report, consequences of not doing so become a misdemeanor offense. 	<ul style="list-style-type: none"> a. A Title IX online course has been identified and training will be coordinated pending School Board approval.
<p>B2 Expand educational efforts on bullying and cyber-bullying for students to also include education on hazing and sex- and gender-based harassment.</p>	<p>Olweus training includes expanded approach to incorporate hazing and sex- and gender-based harassment. iSafe training through PE classes address cyberbullying.</p>	<p>Emphasis on enhancing the iSafe training will be explored to include hazing, sex- and gender-based harassment. (Nancy Reed)</p>
<p>B3 Provide bystander training for students and establish a student peer-based leadership program. Consider programs such as Step Up! to assist with these efforts.</p>	<p>A total of 579 secondary student leaders from both middle and high schools were trained in the TDOE Youth Summit and Move2Stand over the course of eight days in September, 2016. The training covered an all-inclusive approach to building a school community addressing bullying, empathy, bystander response, etc. Follow-up meetings have been requested of participating leadership teams to reinforce strategies in fostering a healthier learning environment. Strategies are also being incorporated in the SSAC</p>	

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B10	<p>Review disciplinary and grievance procedures to ensure they are consistent with the law and guidance. This may include modifications to the newly adopted policy, or the establishment of a complainant's bill of rights, which includes:</p> <ol style="list-style-type: none"> a. A time frame for all major stages of the procedures including the time frame within which <ol style="list-style-type: none"> i. the school will conduct a full investigation of the complaint; ii. both parties receive a response regarding the outcome of the complaint; and 	<p>Principals have been notified of the following TDOE 2016 mandates as follows:</p> <ul style="list-style-type: none"> • For all reports of harassment, intimidation, bullying, and cyber-bullying, an investigation must be initiated within a 48-hour time frame. • A twenty (20) day mandate is required to initiate appropriate intervention for all confirmed harassment, intimidation, bullying or cyber-bullying cases. • There will be a procedure for referral for appropriate counseling and/or support services when deemed necessary by principal. 	

ACTION PLAN – ATTORNEY BULLARD’S RECOMMENDATIONS

<p>iii. the parties may file an appeal. The policy also should provide that both parties will receive periodic status updates;</p> <p>b. Clarifying that throughout the investigation, including any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and respondent must be afforded similar and timely access to any information used at a hearing;</p> <p>c. Notifying both parties, in writing, of the outcome of the complaint and appeal concurrently, to the extent allowed by law; and</p> <p>d. Notifying a complainant of the right to file a criminal complaint.</p>	<ul style="list-style-type: none"> • Principal will immediately inform the parent/legal guardian of the student(s) involved and the availability of counseling or support service when deemed necessary. b. both parties will have opportunity to present witnesses/pertinent evidence (if applicable) c. notification will be provided in the means most effective to the parents (email, phone, etc.) Appeal procedures are noted in the Code of Acceptable Behavior and Discipline. d. A criminal complaint option would be filed with local law enforcement as they are a separate governing body. 		
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B20	Provide detailed periodic reports to the School Board regarding the implementation of these recommendations.	First report will be provided at October School Board Meeting. Updates will be provided quarterly.	

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

RICHARD ROE, A MINOR STUDENT, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS,
RICHARD ROE, SR., AND JANE ROE,
Plaintiffs,

v.

HAMILTON COUNTY DEPARTMENT OF EDUCATION, DBA HAMILTON COUNTY SCHOOLS; ANDRE
MONTGOMERY, INDIVIDUALLY;
JESSE NAYADLEY, INDIVIDUALLY;
JAMES JARVIS, INDIVIDUALLY; AND
MARSHA DRAKE, INDIVIDUALLY,
Defendants,

No. 1:16-cv-00497-TRM-CHS

The Honorable Judge Travis R. McDonough

JURY IS DEMANDED

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS TO HCDE**

COME the Plaintiffs, Richard Roe, a minor student by and through his parents and next friends, Richard Roe, Sr. and Jane Roe, and pursuant to Fed. R. Civ. P. 34, submits these Requests for Production of Documents to HCDE.

REQUESTS FOR PRODUCTION

Please produce:

1. The complete investigation file resulting in the "Report of the External

Investigation,” undertaken by Attorney Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams. This includes all interview notes, witness statements including but not limited to those on “Addendum A,” the final report, earlier drafts of the report, recordings, emails, communications from witnesses or interviewees, all documents listed in “Addendum B,” and/or other data relating or contributing to the Report.

2. All documents reflecting all remedial measures, if any, taken by HCDE following the Report of the External Investigation” undertaken by Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams.

3. All communications from HCDE to Attorney Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams both prior to and after the Report relating to the scope of the report, agreement or disagreement with conclusions, and any actions taken following the Report.

4. All documents reflecting training by HCDE of Andre Montgomery, Jessee Nayadley, James Jarvis, and/or Marsha Drake concerning hazing and bullying.

5. Any prior report of hazing or bullying in any sport in Hamilton County and the actions taken in response.

Respectfully submitted,

**GILBERT RUSSELL McWHERTER
SCOTT & BOBBITT PLC**


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and

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

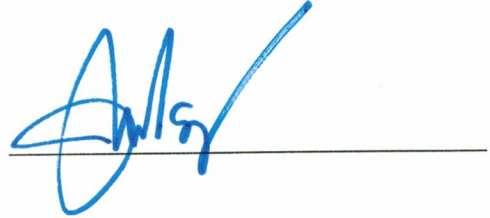
I hereby certify that a true and exact copy of the foregoing has been served via hand delivery ~~email and U.S. mail, first class postage prepaid~~ to the following:

Arthur F. Knight, III
TAYLOR & KNIGHT, P.C.
800 South Gay Street, Suite 600
Knoxville, TN 37929
aknight@taylorknightlaw.com

Charles M. Purcell
Jennifer C. Craig
Christopher C. Hayden

PURCELL, SELLERS & CRAIG, INC.
P.O. Box 10547
Jackson, Tennessee 38308
chuck@psclegal.com
jennifer@psclegal.com
chris@psclegal.com

on this 8th day of March, 2017.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be "Chris".

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

RICHARD ROE, A MINOR STUDENT, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, RICHARD ROE, SR., AND JANE ROE,
Plaintiffs,

v.

HAMILTON COUNTY DEPARTMENT OF EDUCATION, DBA HAMILTON COUNTY SCHOOLS; ANDRE MONTGOMERY, INDIVIDUALLY;
JESSE NAYADLEY, INDIVIDUALLY;
JAMES JARVIS, INDIVIDUALLY; AND
MARSHA DRAKE, INDIVIDUALLY,
Defendants,

No. 1:16-cv-00497-TRM-CHS

The Honorable Judge Travis R. McDonough

DEFENDANT HAMILTON COUNTY DEPARTMENT OF
EDUCATION'S RESPONSES TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS TO
HCDOE

REQUESTS FOR PRODUCTION

The Defendant, Hamilton County Department of Education, "HCDOE" hereby responds to the Plaintiff's First Requests for Production of Documents as follows:

The Defendant is presently restricted from producing the documents requested by the Plaintiff's Request for Production under both the applicable State and Federal law. For example, Tennessee Code Annotated 10-7-504(4)(A)

states that “The records of students in public educational institutions shall be treated as confidential. Information in such records relating to academic performance, financial status of a student or the student’s parent or guardian, medical or psychological treatment or testing shall not be made available to unauthorized personnel or the institution or to the public or any agency, except those agencies authorized by the educational institution to conduct specific research or otherwise authorized by the governing board of the institution, the department of education, and the Tennessee Higher education commission shall have access on a confidential basis to such records as are required to fulfill their lawful functions. Statistical information not identified with a particular student may be released to any person, agency, or the public; and information relating only to an individual student’s name, age, address, dates of attendance, grade levels completed, class placement and academic degrees awarded may likewise be disclosed.” In addition, the applicable Family Educational Rights and Privacy Act (FERPA) prohibits the disclosure of students’ records absent a satisfactory release signed by the guardians of the minors.

Based upon the foregoing, the Defendant proposes to address the state and federal privacy issues as follows: This Defendant is willing to work with the Plaintiffs’ counsel and the Magistrate to fashion a Protective Order to protect this Defendant as to the confidentiality of student records. Further, the Defendant is submitting releases to the guardians of the minors consistent with FERPA. Should the guardians of the minors execute this release and return same to the Defendants, this request will be supplemented with the

information requested by the Plaintiff subject to the proper Protective Order.

Consequently, this Defendant reserves the right to supplement all responses, which are presently unable to be produced because of the foregoing legal authority. The supplementation will be consistent with the Protective Order agreed upon and approved by the Magistrate.

Please Produce:

1. The complete investigation file resulting in the "Report of the External Investigation," undertaken by Attorney Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams. This includes all interview notes, witness statements including but not limited to those on "Addendum A," the final report, earlier drafts of the report, recordings, emails, communications from witnesses or interviewees, all documents listed in "Addendum B," and/or other data relating or contributing to the Report.

RESPONSE: See attached Report of External Investigation prepared by Courtney Bullard and correspondence from Ms. Bullard regarding the production of same. Objection on the grounds that all of the information identified in Addendum A and B are protected by FERPA, T.C.A. § 10-7-504, and the attorney/client privilege and work product doctrines. See attached privilege log and well as responsive documents.

2. All documents reflecting all remedial measures, if any, taken by HCDE following the Report of the External Investigation" undertaken by Courtney Bullard and the lawfirm of Spears, Moore, Rebman and Williams.

REPONSE: Objection on the grounds that any documents responsive to this request

are violative of Rule 407 of the Federal Rules of Evidence. Subject to and without waiving said objection see documents identified in response no. 2. This response will continue to be supplemented in accordance with the Federal Rules of Civil Procedure.

3. All communications from HCDE to Attorney Courtney Bullard and the law firm of Spears, Moore, Rebman and Williams both prior to and after the Report relating to the scope of the report, agreement or disagreement with conclusions, and any actions taken following the Report.

RESPONSE: Objection on the grounds that the information is protected by the attorney/client privilege. See attached privilege log.

4. All documents reflecting training by HCDE of Andre Montgomery, Jesse Nayadley, James Jarvis, and/or Marsha Drake concerning hazing and bullying.

RESPONSE: See documents responsive to No. 4.

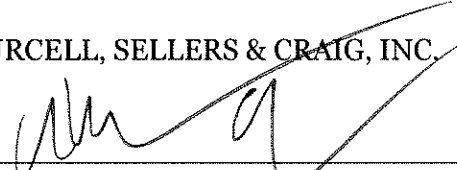
5. Any prior report of hazing or bullying in any sport in Hamilton County and the actions taken in response.

RESPONSE: Objection on the grounds that all of the information responsive to this request is protected by FERPA and T.C.A. § 10-7-504.

Respectfully submitted,

PURCELL, SELLERS & CRAIG, INC.

By:

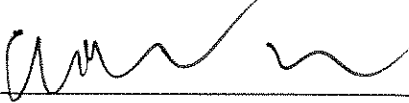


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Chuck@psclegal.com
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded by electronic means to the attorneys of record listed below.

Date: 5-8-17



PERSONS SERVED:

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ewagner@taylorknightlaw.com

Privilege Log
Courtney Bullard

	Document Date	Author	Recipient	Description	Privilege Asserted
1	4/25/16	Scacey Voelp	D. Scott Bennett, Hamilton County BOE	OHS girls' soccer team seeks rights to practice field in accordance with Title IX.	Attorney-client communications between Mr. Bennett and the school board.
2	10/4/17	Dr. Steve Highlander	D. Scott Bennett	Preliminary report regarding OHS.	Attorney-client privilege.
3	6/28/16	Dr. Steve Highlander	Dr. Jonathan Welch David Testerman Mosley Karitsa George Ricks Martin Greg Thurmond Rhonda Joe Galloway Donna Horn Dr. Kirk	Preliminary Bullard report.	Attorney-client privilege.
4	9/22/17	D. Scott Bennett	Courtney Bullard Charles Purcell	E-mail regarding attorney-client privilege issues.	Attorney-client privilege
5	9/23/17	D. Scott Bennett	Courtney Bullard Charles Purcell	Discussion of attorney-client privilege with issues regarding Bullard report.	Attorney-client privilege.
6	1/5/17	Courtney Bullard	Hamilton County Dept of Education – Investigation	Statement for Professional Services	Attorney-client privilege and attorney-work product doctrine.
7	2/17/16	Courtney Bullard	D. Scott Bennett	Proposal of external audit for HCDE	Attorney-client privilege and attorney-work product doctrine.
8	3/17/16	D. Scott Bennett	Courtney Bullard	Discussions with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
9	3/17/16	D. Scott Bennett	Courtney Bullard	Discussion of report between Bullard and school board	Attorney-client privilege and attorney-work product

			attorney.	doctrine.	
10	3/17/16	D. Scott Bennett	Courtney Bullard	Discussions with school board attorney regarding investigation.	Attorney-client privilege and attorney-work product doctrine.
11	3/17/16	D. Scott Bennett	Courtney Bullard	Discussions with school board attorney regarding upcoming investigation	Attorney-client privilege and attorney-work product doctrine.
12	3/18/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
13	3/18/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
14	3/18/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
15	3/18/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
16	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
17	3/21/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
18	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
19	3/21/16	Courtney Bullard	D. Scott Bennett	HCDE engagement letter.	Attorney-client privilege and attorney-work product doctrine.
20	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
21	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
22	3/21/16	Courtney Bullard	D. Scott Bennett	Communication with school	Attorney-client privilege

			board attorney	and attorney-work product doctrine.	
23	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
24	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
25	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
26	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
27	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
28	3/21/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
29	3/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
30	3/22/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
31	3/22/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
32	3/22/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
33	3/22/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
34	3/22/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.

35	3/22/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
36	3/22/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
37	3/24/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
38	3/24/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
39	3/24/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
40	3/24/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
41	3/24/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
42	3/24/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
43	3/24/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
44	3/25/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
45	3/25/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
46	3/25/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
47	3/25/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product

				doctrine.
48	4/4/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
49	4/4/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
50	4/4/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
51	4/5/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
52	4/6/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
53	4/6/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
54	4/6/16	Courtney Bullard	Hamilton Co. Dept. of Education & D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
55	4/13/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
56	4/13/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
57	4/13/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
58	4/13/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
59	4/13/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
60	4/21/16	D. Scott Bennett	Courtney Bullard	Communication with school Attorney-client privilege

			board attorney.	and attorney-work product doctrine.	
61	4/21/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
62	5/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
63	5/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
64	5/2/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
65	5/4/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
66	5/5/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
67	5/5/16	Courtney Bullard	Hamilton Co. Dept. of Education, c/o D. Scott Bennett	Statement for Professional Services.	Attorney-client privilege and attorney-work product doctrine.
68	5/9/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
69	5/11/16	D. Scott Bennett	Courtney Bullard Stacy Stewart	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
70	5/11/16	Courtney Bullard	D. Scott Bennett Stacy Stewart	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
71	5/11/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
72	5/11/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.

73	5/11/16	Courtney Bullard	D. Scott Bennett Stacy Stewart	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
74	5/11/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
75	5/11/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
76	5/12/16	Courtney Bullard	D. Scott Bennett Beth Benson	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
77	5/12/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
78	5/12/16	Courtney Bullard	D. Scott Bennett Beth Benson	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
79	5/12/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
80	5/17/16	Courtney Bullard	D. Scott Bennett	Statement for Professional Services.	Attorney-client privilege and attorney-work product doctrine.
81	5/23/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
82	5/23/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
83	5/19/16	Courtney Bullard	D. Scott Bennett	Statement for Professional Services	Attorney-client privilege and attorney-work product doctrine.
84	5/25/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
85	5/25/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product

				doctrine.
86	5/27/16	Courtney Bullard	Stacy Stewart Beth Benson	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
87	5/27/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
88	5/27/16	Courtney Bullard	D. Scott Bennett Stacy Stewart Beth Benson	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
89	5/27/16	D. Scott Bennett	Stacy Stewart Courtney Bullard Beth Benson	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
90	5/27/16	Stacy Stewart	Courtney Bullard D. Scott Bennett Beth Benson	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
91	5/27/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
92	6/1/16	Stacy Stewart	Courtney Bullard D. Scott Bennett Mary Decamp	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
93	6/6/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
94	6/9/16	Courtney Bullard	D. Scott Bennett	Professional Services Statement. Attorney-client privilege and attorney-work product doctrine.
95	6/10/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
96	6/10/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
97	6/10/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
98	6/14/16	Courtney Bullard	Hamilton Co. Dept. of	Professional Services Attorney-client privilege

		Education, c/o D. Scott Bennett	Statement.	and attorney-work product doctrine.	
99	6/15/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
100	6/15/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
101	6/16/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
102	6/15/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
103	6/24/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
104	6/27/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
105	6/27/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
106	6/27/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney.	Attorney-client privilege and attorney-work product doctrine.
107	6/28/16	Dr. Steve Highlander	D. Scott Bennett; Welch, Dr. Jonathan; Testerman David; Mosley Karitsa; Ricks George; Martin Dr. Greg; Thurman Rhonda; Galloway Joe; Horn Donna; Kelley Dr. Kirk	Bullard's preliminary report.	Attorney-client communications between school board counsel and board members. Attorney-client privilege and attorney-work product doctrine.
108	6/11/16	Courtney Bullard	Hamilton Co. Dept. of Education c/o D. Scott Bennett	Professional Services Statement.	Attorney-client privilege and attorney-work product doctrine.
109	8/2/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney.	Attorney-client privilege and attorney-work product

				doctrine.
110	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
111	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
112	8/2/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
113	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
114	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
115	8/2/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
116	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
117	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
118	8/2/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
119	8/4/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
120	8/4/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
121	8/9/16	Courtney Bullard	Hamilton Co. Dept. of Education c/o D. Scott Bennett	Professional Services Statement. Attorney-client privilege and attorney-work product doctrine.
122	8/20/16	Courtney Bullard	D. Scott Bennett	Communication with school Attorney-client privilege

			board attorney.	and attorney-work product doctrine.
123	9/12/16	Courtney Bullard	Hamilton Co. Dept. of Education c/o D. Scott Bennett	Professional Services Statement. Attorney-client privilege and attorney-work product doctrine.
124	10/13/16	Courtney Bullard	Hamilton Co. Dept. of Education c/o D. Scott Bennett	Professional Services Statement. Attorney-client privilege and attorney-work product doctrine.
125	10/17/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
126	10/17/16	D. Scott Bennett	Courtney Bullard	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
127	10/20/16	Courtney Bullard	D. Scott Bennett	Communication with school board attorney. Attorney-client privilege and attorney-work product doctrine.
128		Courtney Bullard		Draft of investigative report outline.
129		Courtney Bullard		Draft of investigative report outline.
130		Courtney Bullard		Draft of Preliminary findings and recommendations of the external investigation.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE AT CHATTANOOGA**

JOHN DOE, et al,)	
)	
Plaintiffs,)	
)	Case No. 1:16-CV-373
vs.)	
)	Judge Travis McDonough
HAMILTON COUNTY BOARD OF EDUCATION, et al,)	
)	Magistrate Judge Christopher H. Steger
Defendants)	
RICHARD ROE, et al,)	
)	
Plaintiffs)	
)	Case No. 1:16-CV-497
vs.)	
)	Judge Travis McDonough
HAMILTON COUNTY DEPARTMENT OF EDUCATION, et al,)	
)	Magistrate Judge Christopher H. Steger
Defendants.)	

AFFIDAVIT OF COURTNEY H. BULLARD

1. My name is Courtney H. Bullard. I am over the age of eighteen years, I have knowledge of the facts set forth in this Affidavit, and I am otherwise competent to make this Affidavit.

2. I am a licensed practicing attorney in good standing in the State of Tennessee and I am a partner at Spears, Moore, Rebman & Williams located in Chattanooga, TN.

3. On March 17, 2016, the Hamilton County Board of Education (“HCDE”) hired me to conduct an independent review and to provide legal advice to HCDE with respect to the 2015-2016 Ooltewah High School Basketball (“OHS”) team incident in Gatlinburg, Tennessee.

4. My review and advice included an assessment of the climate of the OHS basketball program regarding the reporting and addressing of bullying, hazing and/or sexual harassment; a review of OHS and HCDE policies and procedures to determine where, if any, deficiencies in communication or conflicts in policy existed with respect to these matters; and to review training for student-athletes and OHS athletics staff to determine where, if any, deficiencies existed in this areas.

5. To date, all items related to this matter have been treated as highly confidential and privileged. At the outset, our managing partner informed all firm employees with respect to the sensitivity of this engagement and notified employees that they cannot ask about or discuss the matter within or outside of the office. All electronic documents and records have been maintained in my law firm's document management system under a passcode that only my paralegal, my secretary, a select few attorneys and I can access. All paper files have been maintained separate from the firm's files and where only approved personnel can access them.

6. The HCDE Board did not allow me to disclose the details of my investigation.

7. Throughout the review I provided HCDE with advice and counsel regarding this incident that culminated in a final investigatory report containing findings and recommendations for consideration. My understanding was that this review and advice was in anticipation of litigation.

~Signature to follow~

Further Affiant saith not.

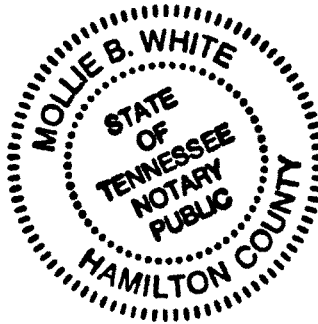
Courtney H. Bullard
COURTNEY H. BULLARD

STATE OF Tennessee)
COUNTY OF Hamilton)

Sworn and subscribed before me this 15 day of September, 2017.

Mollie B. White
NOTARY PUBLIC

My commission expires: 6/10/19





SPEARS | MOORE
REBMAN | WILLIAMS
PROFESSIONAL CORPORATION

Attorney at Law | Courtney H. Bullard | 423.757.0448

April 26, 2017

VIA EMAIL & U.S. MAIL

Jennifer C. Craig, Esq.
PSC Legal
P.O. Box 10547
Jackson, TN 38308

RE: File No. T16-0149 and T16-0151

Dear Ms. Craig:

This letter is in response to your letter dated April 4, 2017 regarding discovery requests in the above referenced matter. Specifically, plaintiffs have requested my investigation file and communications from HCDE to me relating to the report.

In response, HCDE hired me to conduct an independent investigation in anticipation of litigation. Specifically, the retention letter between HCDE and me stated:

"Pursuant to this agreement, you will be responsible for conducting an independent review and for providing legal advice to HCDE as part of that review."

A copy of the letter is attached. The Board of Education voted to produce my report to the media in August of 2016 therefore that is the only document I can produce at this time. Any underlying documents, including my investigatory file and my communications via email with HCDE, are protected under the attorney-client privilege/work product doctrine. In addition, many of the items requested are part of a student's disciplinary records and therefore protected under the Federal Education Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99) and/or contain information pertaining to minors. An order from the Court mandating the disclosure of said documents or, at the very least, a strictly defined protective order. Thus, assuming *arguendo* that they are not protected under the attorney-client privilege/work product doctrine, I will not produce responsive documents without an appropriate protective order in place.

Sincerely,

SPEARS, MOORE, REBMAN & WILLIAMS, P.C

Courtney H. Bullard
Courtney H. Bullard
chb@smrw.com *by VLL*

Enclosure

LAW OFFICES | MAILING ADDRESS

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P.O. Box 1749 Chattanooga, TN 37401-1749

PH 423.756.7000

FX 423.756.4801

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SPEARS | MOORE
REBMAN | WILLIAMS
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Attorney at Law | Courtney H. Bullard | 423.757.0448

October 12, 2017

Charles Purcell, Esq.
Purcell, Seller & Craig, Inc.
45 Murray Guard Drive
Jackson, TN 38305-3610

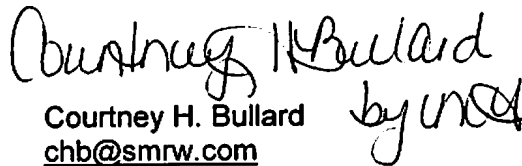
RE: Richard Roe, et al. v. Hamilton County Department of Education, et al.
USDC ED of Tenn. No. 1:16-cv-00497

Dear Mr. Purcell:

This letter is to confirm that I will serve as an expert witness in the above styled case. My expert witness fee is \$250.00.

Should you need any additional information, please do not hesitate to contact me.

Very truly yours,


Courtney H. Bullard
chb@smrw.com

CHB:MEB:mlg

302907-00001/701110.docx

LAW OFFICES

601 Market St., Ste. 400 | Chattanooga, TN 37402

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