

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

**JOHN DOE** )  
**by and through his next friend JANE DOE** )  
 )  
**PLAINTIFF** )

**V.** )

**No. 1:16-CV-00373  
JURY DEMAND**

**HAMILTON COUNTY BOARD OF EDUCATION,**)  
**d/b/a HAMILTON COUNTY SCHOOLS; et al** )  
 )  
**DEFENDANTS.** )

**RICHARD ROE, et al** )  
 )  
**PLAINTIFFS** )

**V.** )

**No. 1:16-cv-00497  
JURY DEMAND**

**HAMILTON COUNTY DEPARTMENT OF** )  
**EDUCATION, d/b/a HAMILTON COUNTY** )  
**SCHOOLS; et al** )  
 )  
**DEFENDANTS.** )

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**HAMILTON COUNTY DEPARTMENT OF EDUCATION’S SUPPLEMENTAL  
RESPONSE TO THE PLAINTIFFS’ SECOND MOTION TO COMPEL**

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**NOW COMES** the Defendant, the Hamilton County Department of Education, and in further support of its Response to the Plaintiffs’ Second Motion to Compel, Doc. No. 145, would show this Court as follows:

1. In support of their Motion, the Plaintiff has grossly mischaracterized the nature of certain communications between Attorneys D. Scott Bennett and Courtney H. Bullard. In particular, the Plaintiff would have this Court believe that Courtney Bullard was hired not as an

independent investigator but merely to minimize the Board of Education's exposure to potential litigation.

2. In support of this specious argument, the Plaintiff has referenced only portions of an email Mr. Bennett sent to Ms. Bullard on April 13, 2016 in which Mr. Bennett purportedly encouraged Ms. Bullard to "suppose" that there had been no Title IX violation. In fact, the text of this email, attached as Exhibit 6 to the Plaintiffs' Motion, makes clear that, rather than restricting the scope of Ms. Bullard's investigation, Mr. Bennett was actually encouraging her to expand it. His concern was that, *even if* Title IX were not otherwise implicated, it did not follow that there had not been a breach of law, policy, or duty. *Indeed, Mr. Bennett urged Ms. Bullard not to take a "myopic" approach to her investigation.* The Plaintiffs' assertions to the contrary are disingenuous as established by the entirety of the full text of the email.

3. Furthermore, in an earlier email that same day, attached as Exhibit 7 to the Plaintiffs' Motion, Mr. Bennett had urged Ms. Bullard to consider whether Title IX might have been implicated because of the assailants' motivations *even though* not every victim had been the subject of a sex crime within the meaning of Tennessee law. Once again, the purpose of what the Plaintiff has described as "collaboration" was to expand the scope of Ms. Bullard's investigation rather than to restrict it.

4. Perhaps most disturbingly, however, the Plaintiff has deliberately omitted those references in Mr. Bennett's emails that make clear that he was advising Ms. Bullard to explore *the full measure* of problems facing the school system. In Exhibit 7, Mr. Bennett points out that the rape of one student obviously implicates Title IX regardless of whether the assailants were motivated by sexual gratification. He also points out that it becomes "difficult to argue" that any alleged tradition that is designed to demean boys "wasn't an effort to demean boys because of

their sex,” thus triggering Title IX concerns. Similarly, in Exhibit 6, Mr. Bennett reiterates that the scope of Ms. Bullard’s investigation “doesn’t need to be limited to Title IX” and that a “non-violation of Title IX” ought not “cover up a breach of duty.” The Plaintiff fails to reference any of these statements because they do not fit within the false narrative filed with the Court.

5. As the Court is aware, by way of the Memorandum Order Nunc Pro Tunc to Friday, January 12, 2018, Defendants were to provide documents identified in its Privilege Log that fell within the parameters ordered by the Court. Should the Defendants withhold any documents those were to be provided for an in camera review. On January 25, 2018, Defendants provided all documents identified in the Second Privilege Log with the exception of those identified in the Amended Privilege Log. Plaintiffs claim that additional documents were newly identified in each log provided by the Defendants. This assertion is not accurate. The documents identified as privileged have remained the same from the original log. Had Plaintiffs consulted with Defendants, this fact could have been explained prior to filing this present Motion.

6. As set forth in its previous response to the Motion to Compel, the timing of the filing of the Motion to Compel rendered the Motion moot. Defendant would incorporate by reference its Response to the Motion to Compel filed on January 26, 2018, Docket Entry 145. As the Court is aware, on January 25, 2018, Defendant submitted for in camera review all remaining documents that did not fall within the parameters set forth in the Memorandum Order governing the Motion to Compel. After submitting the foregoing documents to the Court, the Plaintiffs filed this Motion to Compel. Due to the fact that Defendant had complied with the Memorandum Order, there was no reason for the Plaintiffs to file the Motion to Compel other than to seek media attention and taint public perception in contrast to the local rules of this

Court. (See article attached as Exhibit A). Further, while Plaintiffs couch their Motion as one to “compel” documents already in the Court’s possession, Plaintiffs’ attempt to use this Motion to discuss Courtney Bullard’s qualifications as an Expert. As the Court is aware, a Motion to Compel is not the platform for this argument. Further, as set forth above, Plaintiffs have also attempted to use this motion to attack a fellow lawyer, Scott Bennett, by mischaracterizing information set forth in emails as evidenced above. All counsel at the outset of this case were advised and cautioned as to LR 83.2 by this Court. These actions on the part of the Plaintiffs in contradiction to this Rule and the Court’s own directive are unfortunate and should not be tolerated by this Court. Therefore, the Defendant would request the Court to order the Withdrawal of the Motion to Compel and issue a special order under LR 83.2(c) prohibiting the attempts by the Plaintiffs to disseminate false information by way of a public Court filing in efforts to interfere with the rights of both parties to an impartial trial.

**WHEREFORE, PREMISES CONSIDERED**, the Defendant prays this Court to deny the Plaintiffs’ Motion and Order its Withdrawal from the Court docket. The Defendant would further request the Court to issue a special order under LR 83.2(c) to govern the remaining dissemination of information by way of public Court filings in this matter.

Respectfully submitted,

PURCELL, SELLERS & CRAIG, INC.

By: s/Charles M. Purcell  
Charles M. Purcell (012461)  
Jennifer C. Craig (020036)  
Christopher C. Hayden (028220)  
Attorneys for Defendant  
P.O. Box 10547  
Jackson, Tennessee 38308  
(731) 300-0737

[Chuck@psclegal.com](mailto:Chuck@psclegal.com)  
[jennifer@psclegal.com](mailto:jennifer@psclegal.com)  
[Chris@psclegal.com](mailto:Chris@psclegal.com)

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was forwarded by electronic means via the Court's electronic filing system.

s/Charles M. Purcell

Date: January 28, 2018

PERSONS SERVED:

Monica Beck  
The Fierberg National Law Group, PLLC  
School Violence Law  
105 East Philip Street  
P.O. Box 121  
Lake Leelanau, MI 49653

Edmund J. Schmidt, III  
Law Office of Eddie Schmidt  
2323 21<sup>st</sup> Avenue South, Suite 502  
Nashville, TN 37212

Arthur F. Knight, III  
Taylor & Knight, G.P.  
800 South Gay Street, Suite 600  
Knoxville, TN 37929

Justin S. Gilbert  
Gilbert Russell McWherter Scott Bobbitt PLC  
100 W. Martin Luther King Blvd., Suite 504  
Chattanooga, TN 37402

Eric J. Oliver  
Lewis & Oliver  
100 W. Martin Luther King Blvd., Suite 501  
Chattanooga, TN 37402

Jordan K. Crews  
Brian A. Pierce  
Office of Attorney General  
General Civil Division  
P.O. Box 20207  
Nashville, TN 37202

Curtis L. Bowe, III  
Bowe & Associates, PLLC  
707 Georgia Avenue, Suite 301  
Chattanooga, TN 37402

Jaclyn L. McAndrew  
Heather Ross  
Office of Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202

Thomas William Caldwell  
W. Carl Spining  
Ortale, Kelley, Herbert & Crawford  
P.O. Box 198985  
Nashville, TN 37219

Rheubin M. Taylor  
Office of the County Attorney  
Room 204, County Courthouse  
Chattanooga, TN 37402

Benjamin M. Rose  
Joshua D. Arters  
Law Office of Ben M. Rose, PLLC  
P.O. Box 1108  
Brentwood, TN 37024

# The Daily Herald.

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## Attorneys for Ooltewah victims: Emails show district, investigator 'openly collaborating'

By ZACK PETERSON Chattanooga Times Free Press

Posted Jan 27, 2018 at 7:42 AM

Updated Jan 27, 2018 at 8:18 AM

CHATTANOOGA — A batch of emails shows Hamilton County Schools' lawyer tampered with a hired investigator's probe into Ooltewah High School's harassment culture, according to civil attorneys for the student victims in the 2015 rape incident.

Civil attorneys say the 2016 correspondence is evidence of an argument they've made for months in Chattanooga's U.S. District Court: Not only was Hamilton County Schools ill-equipped to deal with this sexual abuse, but its lawyers refused to turn over key documents that would show whether they influenced the findings of its "so-called" independent investigation.

That's because its attorney, Scott Bennett, tried to soften the district's "legal exposure" in upcoming civil litigation by "floating" defense theories to investigating lawyer Courtney Bullard before she finished her Ooltewah report in 2016, according to a motion filed last week by civil attorneys. Then, when she presented drafts, Bennett offered legal revisions and other suggestions in the interests of the district, they say.

For instance, during one of their exchanges in April, Bennett asked Bullard to "suppose" the hazing of three students with a pool cue in 2015 didn't amount to a Title IX violation because it wasn't motivated by sexual gratification and therefore wasn't sexual violence under Tennessee law. Title IX is the federal statute designed to protect people against sexual discrimination and violations could open the district up to more liability.

Ultimately, Bullard said the school's hazing training was "deficient" and found a culture of bullying and hazing during the 2015-16 season — but no sexual harassment.

Bennett and the civil attorneys declined to comment Friday, but the civil attorneys' latest filing says this new evidence proves they are entitled to another five emails school board attorneys haven't handed over that may show more open collaboration.

"This log [from the district] shows Mr. Bennett to be copying Ms. Bullard about defense strategy during Ms. Bullard's investigation and before she wrote her 'independent' report," civil attorneys Eric Oliver and Justin Gilbert argued in their motion. "Plaintiffs firmly maintain they are entitled to review these communications because plaintiffs now have highly credible evidence that Ms. Bullard was not acting independently."

U.S. District Magistrate Judge Christopher Steger, who ordered the school board to release the emails earlier this month, could rule on this new motion without input or schedule a hearing so both sides can further argue their points. As of Friday afternoon, a hearing hadn't been scheduled.

Four freshman students say they were attacked during the Ooltewah High School basketball team's trip to Gatlinburg, Tenn., over Christmas 2015. One of the students had a pool cue forced up his rectum, puncturing his colon.

In March 2016, the board commissioned Bullard, an attorney with Spears, Moore, Rebman & Williams P.C., to conduct an investigation into the school's culture, as well as district policies following the rape.

Bullard's retention letter said she also needed to provide legal advice to the board. And while attorneys debated whether she had to turn over all of the emails, first drafts and notes she produced but didn't include in her final report, Bullard affirmed this view in a Sept. 15, 2017, affidavit in U.S. District Court: "My understanding was, this review and advice was in anticipation of litigation," she wrote.



As a result, school board attorneys continued to argue Bullard's work and communications with the school board were protected under attorney-client and work doctrine privileges. Those privileges, respectively, say communications between a lawyer and their client are secret, and that any underlying materials a lawyer creates in anticipation of litigation also deserve protection.

School board lawyers eventually agreed to turn over her investigative file days before a scheduled hearing on the issue.

But in the process, they repurposed Bullard as an expert witness and said her roughly 130 emails were still protected under a federal procedural rule. Suspicious civil attorneys said there still wasn't any attorney-client privilege just because board attorneys made Bullard wear a different hat — expert witness as opposed to independent investigator or attorney.

One of the newly released emails shows Bullard helped create that structure, according to Thursday's motion. Bullard admitted to inserting the "legal advice" part into her retention letter so she could have the option of wearing "conflicting" hats of neutral investigator versus defense lawyer, the civil attorneys said.

"You will see I included language about providing legal advice to HCDE so that we can maintain the option of preservation of attorney-client privilege," Bullard wrote, according to the court document.

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