

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

EMILY JAYNE BOURQUE,)
)
 Plaintiff,)
)
 v.)
)
 MARION COUNTY BOARD OF)
 EDUCATION d/b/a MARION COUNTY)
 SCHOOLS; MARK GRIFFITH, Individually)
 and as an agent of Marion County Schools;)
 JAMES RYAN PHILLIPS, Individually and)
 as an agent of MARION COUNTY)
 SCHOOLS; SHERRY PRINCE, Individually)
 and as an agent of MARION COUNTY)
 SCHOOLS; and JULIE BENNETT,)
 Individually and as an agent of MARION)
 COUNTY SCHOOLS;)
)
 Defendants.)

No.1:21-cv-00047-DCLC-SKL

ANSWER OF DEFENDANTS

NOW COME the Defendants, Marion County Board of Education d/b/a Marion County Schools; Mark Griffith, individually and as an agent of Marion County Schools; James Ryan Phillips, individually and as an agent of Marion County Schools; Sherry Prince, individually and as an agent of Marion County Schools; and Julie Bennett, individually and as an agent of Marion County Schools (“Defendants”), by and through counsel, and, in Answer to Plaintiff’s Complaint, plead as follows:

FIRST DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

With regard to the allegations in the paragraphs specifically enumerated in the Complaint, Defendants respond as follows:

I. INTRODUCTION

1. The allegations in Paragraph 1 are generally admitted.
2. Defendants deny that they have deprived Plaintiff of any First Amendment rights.
3. Defendants deny the allegations in Paragraph 3.
4. Defendants deny that they violated Plaintiff's rights, and the individually named defendants further aver that they are entitled to qualified immunity.
5. Defendants admit that freedom of speech is protected under the First Amendment. The remaining allegations of Paragraph 5 are denied as stated. Defendants deny that they restrained any of Plaintiff's Constitutional rights.

II. PARTIES

6. Upon information and belief, Defendants admit the allegations in Paragraph 6.
7. Defendants admit that Defendant Marion County Board of Education d/b/a Marion County Schools is a local education agency existing pursuant to the laws of the State of Tennessee for the purpose of providing a system of public education in and for Marion County, Tennessee and that it is a governmental entity within the meaning of the Tennessee Governmental Tort Liability Act, *Tenn. Code Ann.* § 29-20-102(3)(A). Defendants further admit that Defendant Marion County Board of Education d/b/a Marion County Schools is a "person" within the meaning of 42 U.S.C. § 1983. The remaining allegations of Paragraph 7 are denied.

8. Defendants admit that Defendant Mark Griffith is Director of Schools for the Marion County Board of Education and is a “person” within the meaning of 42 U.S.C. § 1983.
9. Defendants admit that Defendant James Ryan Phillips is Chairman of the Marion County Board of Education and is a “person” within the meaning of 42 U.S.C. § 1983.
10. Defendants admit that Defendant Julie Bennett was Chairman of the Marion County Board of Education and is a “person” within the meaning of 42 U.S.C. § 1983.
11. Defendants admit that Defendant Sherry Prince was Principal of Marion County High School and is a “person” within the meaning of 42 U.S.C. § 1983.

III. JURISDICTION AND VENUE

12. Defendants admit the allegations in Paragraph 12 accurately describe the nature of this cause of action, but Defendants deny that they violated Plaintiffs’ Constitutional rights or engaged in any unlawful employment practices.
13. Defendants admit that this Court has subject matter jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331 and § 1343.
14. Defendants admit that this Court has personal jurisdiction over the Defendants.
15. Defendants admit that venue is proper in this Court.

IV. BACKGROUND AND FACTUAL ALLEGATIONS

16. Defendants deny the allegations in Paragraph 16.
17. Defendants admit that Plaintiff has been a full-time employee of Marion County Schools since 2008. Defendants admit that Plaintiff worked as a substitute teacher in 1995-96, 2007, and part of 2008.
18. Defendants admit that Plaintiff has a college degree. Defendants do not have enough information to admit or deny the specific allegations in Paragraph 18.

19. Defendants admit that Plaintiff is tenured.
20. Defendants admit that Plaintiff achieved satisfactory evaluation scores but deny the materiality of these allegations.
21. Defendants admit the allegations in Paragraph 21.
22. Defendants deny that Plaintiff was routinely assigned leadership, mentoring, and coaching duties. Defendants deny the materiality of these allegations.
23. Defendants admit the allegations in Paragraph 23. After the Complaint was filed, Derek Chauvin was also charged with and convicted of third-degree murder.
24. Defendants admit the allegations in Paragraph 24.
25. Defendants admit the allegations in Paragraph 25.
26. Defendants admit Paragraph 26 accurately describes the story in the Washington Post.
27. Defendants admit the allegations in Paragraph 27.
28. Upon information and belief, Defendants admit the allegations in Paragraph 28.
29. Defendants admit that Defendant Griffith is or was Facebook friends with the individuals listed in Paragraph 29. To the extent Paragraph 29 is intended to allege liability on the part of Defendants, that is denied.
30. Upon information and belief, Defendants admit the allegations in Paragraph 30.
31. Defendants admit the allegations in Paragraph 31.
32. Defendants admit the allegations in Paragraph 32.
33. Defendants do not have enough information to admit or deny the allegations in Paragraph 33 and so deny the same and demand strict proof.
34. Defendants do not have enough information to admit or deny the allegations in Paragraph 34 and so deny the same and demand strict proof.

35. Defendants do not have enough information to admit or deny the allegations in Paragraph 35 and so deny the same and demand strict proof.
36. Defendants do not have enough information to admit or deny the allegations in Paragraph 36 and so deny the same and demand strict proof.
37. Defendants admit the allegations in Paragraph 37.
38. Defendants admit the allegations in Paragraph 38.
39. Defendants admit that, at some point, Plaintiff deleted the Facebook post at issue. Defendants do not have enough information to admit or deny the remaining allegations in Paragraph 39 and so deny the same and demand strict proof.
40. Defendants admit that Defendant Prince called Plaintiff to inform her that she was being suspended and that Plaintiff and Defendants Prince and Griffith met shortly thereafter. Defendants deny that Defendant Prince's demeanor in her phone conversation with Plaintiff was curt. Defendants further aver that, since school was not in session, the so-called suspension did not materially impact Plaintiff.
41. Defendants admit the allegations in Paragraph 41 but deny their materiality.
42. Defendants admit the allegations in Paragraph 42. Defendants further note that Defendant Griffith told Plaintiff that any potential transfer would not be punitive.
43. Defendants admit the allegations in Paragraph 43 but deny their materiality.
44. Defendants do not have enough information to admit or deny the allegations in Paragraph 44 and so deny the same and demand strict proof.
45. Defendants do not have enough information to admit or deny the allegations in Paragraph 45 and so deny the same and demand strict proof.

46. Defendants admit that Plaintiff brought certain other individuals' Facebook posts to Defendant Griffith's attention at some point during the summer of 2020. Defendants deny the materiality of this allegation.
47. Defendants admit that Defendant Griffith determined that, based upon information that he was provided about other individuals' Facebook posts, those posts were not actionable from an employment perspective. Defendants deny the materiality of these allegations.
48. Defendants are aware that an individual posting online under the name "KaShae Reddicks" initiated an online petition regarding Plaintiff's employment. Defendants do not have enough information to admit or deny the remaining allegations in Paragraph 48 and so deny the same and demand strict proof. Defendants deny the materiality of these allegations.
49. Defendants admit that WRCB wrote a story about Plaintiff's social media post. Defendants do not know precisely what motivated WRCB to write the story and therefore deny the remaining allegations of Paragraph 49 and demand strict proof.
50. Defendants admit that Defendant Griffith is quoted in the WRCB story. Upon information and belief, Defendants admit that Plaintiff refrained from commenting on the story. Defendants deny the materiality of these allegations.
51. Defendants do not have enough information to admit or deny the allegations in Paragraph 51 and so deny the same and demand strict proof.
52. Defendants admit the allegations of Paragraph 52 but deny their materiality.
53. Defendants deny that Defendant Prince ignored Plaintiff's communications. Defendants generally admit the remaining allegations in Paragraph 53 but deny their materiality.
54. Defendants deny that Defendant Prince lied to Plaintiff. Defendants admit that Plaintiff was not included on emails if she was not a necessary recipient. During this time in the

summer of 2020, as Plaintiff had already been informed, no decision had been made as to whether Plaintiff was going to be assigned to MCHS for the 2020-21 school year.

Defendants deny the materiality of these allegations.

55. Defendants generally admit the allegations in Paragraph 55 but deny their materiality.

56. Defendants generally admit the allegations in Paragraph 56 but deny their materiality.

57. Defendants admit Plaintiff made Defendant Griffith aware of Facebook posts made by other school system employees. Defendants further admit that, based upon information that Defendant Griffith was provided about other individuals' posts, those posts were not actionable from an employment perspective. Defendants deny the materiality of these allegations.

58. Defendants admit the allegations in Paragraph 58 but deny their materiality.

59. Defendants do not have sufficient information to admit or deny the allegations in Paragraph 59 and so deny the same and demand strict proof.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants do not have enough information to admit or deny the allegations in Paragraph 61 and so deny the same and demand strict proof.

62. Defendants do not have enough information to admit or deny the allegations in Paragraph 62 and so deny the same and demand strict proof. Defendants deny the materiality of this allegation.

63. Defendants do not have enough information to admit or deny whether or why Plaintiff's younger daughter dropped out of her high school class play and so deny that allegation and demand strict proof. Defendants do not have enough information to commit or deny the type of content, if any, Wesley Brewer, posts and so deny the same and demand strict proof.

Defendants deny Plaintiff's characterization of the incident where Plaintiff's husband appeared at a closed school theater practice. Defendants admit that Wesley Brewer has received awards but deny the materiality of that allegation. Defendants deny the remaining allegations in Paragraph 63 as stated.

64. Defendants admit that Plaintiff's younger daughter participated in virtual learning. Defendants do not have enough information to admit or deny the remaining allegations in Paragraph 64 and so deny the same and demand strict proof. Defendants deny the materiality of these allegations.

65. Defendants admit that Defendant Griffith asked Plaintiff to meet to say that they had a meeting and that the two then proceeded to have a genuine meeting. Defendants expressly deny that the meeting between Defendant Griffith and Plaintiff was a "faux meeting." Defendants generally admit the remaining allegations in Paragraph 65, as Defendant Griffith wanted to ensure any concerns Plaintiff had were addressed and that she knew that she might be moved to the alternative school.

66. Defendants admit that Plaintiff emailed Defendant Griffith about her employment. Defendants deny that any alleged treatment Plaintiff represented she received from any of her colleagues was actionable from an employment perspective. Defendants deny that Plaintiff was the recipient of negative treatment from co-workers on the job, as school was not in session.

67. Defendants admit the allegations in Paragraph 67.

68. Defendants do not have enough information to admit or deny the allegations in Paragraph 68 and so deny the same and demand strict proof. Defendants deny the materiality of these allegations.

69. Defendants deny the allegations in Paragraph 69 as stated.
70. Defendants do not know what specifically Plaintiff is referencing by use of the term “stir the pot” with regard to other employees and so deny the same. Defendants admit that Ms. Reddicks requested the issue regarding Ms. Bourque’s Facebook post be placed on the agenda for the next Marion County School Board meeting. Defendants generally admit the remaining allegations in Paragraph 70.
71. Defendants admit the allegations in Paragraph 71 but deny their materiality.
72. Defendants admit that, in July 2020, Plaintiff was still stationed at MCHS, though it was unclear whether she would remain there for the 2020-21 school year and therefore unclear whether it was necessary that she be included on school communications. Defendants generally admit the remaining allegations in Paragraph 72 but deny their materiality.
73. Defendants deny that any controversy at issue was caused by anyone other than Plaintiff. Defendants generally admit the remaining allegations in Paragraph 73 but note that none of the alternatives suggested by Plaintiff would have eliminated the potential issues she might have with other colleagues and students at MCHS arising out of her Facebook post that might impede the efficient operations of MCHS.
74. Defendants admit the allegations in Paragraph 74.
75. Defendants admit the allegations in Paragraph 75.
76. Defendants admit that, during the public comment portion of the July 2020 meeting of the Marion County Board of Education, Ms. Reddick’s brother spoke about Plaintiff’s Facebook post.
77. Defendants admit the allegations in Paragraph 77.
78. Defendants admit the allegations in Paragraph 78.

79. Defendants admit the allegations in Paragraph 79 but deny their materiality.
80. Defendants are not certain what Plaintiff is referring to in stating that she “had done nothing to Defendant Prince” and so deny the same. The remaining allegations in Paragraph 80 are generally admitted.
81. Defendants deny that any official meeting of the Marion County Board of Education was closed to the public. Defendants admit that David Smith was removed from his post as principal at Whitwell Elementary but deny that he remained at that school as Assistant Principal. Defendants generally admit the remaining allegations in Paragraph 81 but deny their materiality or relevance.
82. Defendants generally admit the allegations in Paragraph 82.
83. Defendants deny the allegations in Paragraph 83.
84. Defendants admit the allegations in Paragraph 84 but deny their materiality.
85. Defendants do not have enough information to admit or deny the allegations in Paragraph 85 and so deny the same and demand strict proof.
86. Defendants admit the content of KaShe Reddicks’ social media post as copied into Paragraph 86 of the Complaint. Defendants deny the materiality of her social media post.
87. Defendants admit that the Plaintiff met with Defendant Griffith on August 24, 2020. Defendants generally admit the remaining allegations of Paragraph 87.
88. Defendants deny the allegations in Paragraph 88.
89. Defendants deny the allegations in Paragraph 89.
90. Defendants admit that teachers at MCHS utilize email accounts for school-related communications. Defendants deny that Defendants intentionally deleted any of Plaintiff’s emails or spoliated any evidence. Defendants do not have enough information to admit or

deny the remaining allegations in Paragraph 90 and so deny the same and demand strict proof. Defendants expressly deny that they spoliated any evidence.

91. Defendants do not have enough information to admit or deny the allegations in Paragraph 91 and so deny the same and demand strict proof.

92. Defendants deny that Plaintiff was regularly assigned extended contract duties. During the 2019-20 school year, the only extra assignment Plaintiff had was as an ACT proctor. Plaintiff had no extended contract duties in the 2018-19 school year.

93. Defendants deny the allegations in Paragraph 93.

94. Defendants deny the allegations in Paragraph 94.

95. Defendants do not have enough information to admit or deny the allegations in Paragraph 95 and so deny the same and demand strict proof.

96. Defendants admit the allegations in Paragraph 96 but deny their materiality.

97. Defendants deny the allegations in Paragraph 97.

98. Defendants admit that the position into which Plaintiff was placed was not posted but deny that it was not a previously slated position.

99. Defendants deny the allegations in Paragraph 99 as stated.

100. Defendants deny the allegations in Paragraph 100.

101. Defendants do not have enough information to admit or deny the remaining allegations in Paragraph 101 and so deny the same and demand strict proof. Defendants deny the materiality of these allegations.

102. Defendants deny that employees are assigned to the alternative school with the intent to push them to resign. The remaining allegations in Paragraph 102 are denied as stated.

103. Defendants admit the allegations in Paragraph 103 but deny their materiality.

104. Defendants do not have enough information to admit or deny the allegations in Paragraph 104 and so deny the same and demand strict proof.
105. Defendants do not have enough information to admit or deny the allegations in Paragraph 105 and so deny the same and demand strict proof.
106. Defendants admit that Defendants Griffith and Phillips and Bobby McCulley are on the sick leave bank committee and that it takes three votes to oppose the use of sick bank days. Defendants deny the remaining allegations in Paragraph 106 as stated. Defendants further deny the materiality of these allegations.
107. Defendants deny the allegations in Paragraph 107.
108. Defendants deny the allegations in Paragraph 108.
109. Defendants deny the allegations in Paragraph 109.
110. Defendants deny the allegations in Paragraph 110.
111. Defendants deny the allegations in Paragraph 111.
112. Defendants deny the allegations in Paragraph 112.
113. Defendants deny the allegations in Paragraph 113. Defendants deny that they retaliated against Plaintiff at any point in time.

V. LEGAL CLAIMS AND APPLICABLE LAW

114. This Paragraph does not require a response.
115. Defendants admit the allegations in Paragraph 115.
116. Defendants admit that, generally, individuals posting as private citizens on their social media pages enjoy Constitutionally protected freedom of speech. Defendants deny that they did not have the right to address the issues created by Plaintiff's June 5, 2020

Facebook post to the extent they substantially disrupted or had the potentially to substantially disrupt the efficient operations of the Marion County school system.

117. Defendants admit that only certain narrowly defined categories of speech do not enjoy protection under the First Amendment. Defendants deny that public school teachers have unlimited freedom of speech with regard to posts they make on social media.

118. Defendants deny that public school teachers have unlimited freedom of speech with regard to posts they make on social media.

119. Defendants deny that public school teachers have unlimited freedom of speech with regard to posts they make on social media and further deny that the Plaintiff's speech was fully protected under the circumstances.

120. Defendants admit that the topic of the Plaintiff's June 5, 2020 Facebook post involved a matter of public concern. Defendants deny that public school teachers have unlimited freedom of speech with regard to posts they make on social media.

121. Defendants admit the allegations in Paragraph 121 but deny their materiality.

122. Defendants deny the allegations in Paragraph 122.

123. Defendants deny the allegations in Paragraph 123.

124. Defendants admit the allegations in Paragraph 124 but deny their materiality.

125. Defendants deny the allegations in Paragraph 125.

126. Defendants deny the allegations in Paragraph 126 as stated.

127. Defendants deny the allegations in Paragraph 127 as stated but also deny that any alleged fear of "going viral" motivated Defendants' actions with regard to Plaintiff's June 5, 2020 Facebook post.

128. Defendants admit that Plaintiff was transferred to a different school for the 2020-21 school year. Defendants deny the remaining allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

130. Defendants deny the allegations in Paragraph 130.

131. Defendants deny the allegations in Paragraph 131.

132. Defendants deny the allegations in Paragraph 132.

133. Defendants deny the allegations in Paragraph 133.

134. Defendants deny the allegations in Paragraph 134.

135. Defendants deny that the case law referenced in Paragraph 135 is relevant to the circumstances underlying this lawsuit.

136. Defendants deny that the case law referenced in Paragraph 136 is relevant to the circumstances underlying this lawsuit.

137. Defendants deny that the case law referenced in Paragraph 137 is relevant to the circumstances underlying this lawsuit.

138. Defendants deny the allegations in Paragraph 138.

139. Defendants deny the allegations in Paragraph 139.

140. Defendants deny the allegations in Paragraph 140.

141. Defendants deny the allegations in Paragraph 141.

142. Defendants deny the allegations in Paragraph 142.

THIRD DEFENSE

Defendants deny that Plaintiff is entitled to any of the relief requested.

FOURTH DEFENSE

Defendants deny that they violated Plaintiff's First Amendment rights.

FIFTH DEFENSE

Defendants' interest in the effective and efficient operation of the Marion County school system outweighs any interest the Plaintiff may have in her free speech with regard to the Facebook post at issue.

SIXTH DEFENSE

At all times, Defendants' actions were taken in good faith and for legitimate and non-retaliatory reasons in the interest of the effective and efficient operation of the Marion County school system.

SEVENTH DEFENSE

Even if Plaintiff suffered a violation of her constitutional rights, which Defendants deny, this violation did not result from a policy, custom or practice of Defendant Marion County Board of Education and is not actionable under 42 U.S.C. § 1983.

EIGHTH DEFENSE

Individual Defendants Mark Griffith, James Ryan Phillips, Sherry Prince, and Julie Bennett assert the doctrine of qualified immunity as a complete bar to any claims against them.

NINTH DEFENSE

To the extent Plaintiff's Complaint relies on the doctrine of *respondeat superior*, such claims are barred, as *respondeat superior* is not a basis for a cause of relief under 42 U.S.C. § 1983.

TENTH DEFENSE

With respect to any allegations contained in Plaintiff's Complaint not previously admitted, explained, or denied, Defendants deny the same and demand strict proof.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Court dismisses Plaintiff's action and taxes costs accordingly.

Respectfully submitted,

BENNETT & DECAMP, PLLC

BY: /s/ D. Scott Bennett

D. SCOTT BENNETT – TNBPR: 015988

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Attorneys for Defendant Marion County Board of Education d/b/a Marion County Schools; Defendant Mark Griffith individually and as an agent of Marion County Schools; Defendant James Ryan Phillips individually and as an agent of Marion County Schools; Defendant Sherry Prince individually and as an agent of Marion County Schools; and Defendant Julie Bennett individually and as an agent of Marion County Schools

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 26th day of April, 2021.

BY: /s/ D. Scott Bennett

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