

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JENNIFER MCWILLIAMS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:20-cv-01419-JPH-TAB
)	
Frankton-Lapel Community Schools,)	
)	
Defendant.)	

**DEFENDANT’S ANSWER TO PLAINTIFF’S VERIFIED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Comes now Defendant Frankton-Lapel Community Schools (the “School”), by counsel, stating as follows for its Answer to Plaintiff’s Verified Complaint for Declaratory and Injunctive Relief.

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments of the Constitution of the United States, as well as 42 U.S.C. §§ 1983 and 1988.

ANSWER: The School admits that Plaintiff’s Complaint purports to bring claims under 42 U.S.C. §§ 1983 and 1988 based on First Amendment violations (as applied to the School via the Fourteenth Amendment), but denies that Plaintiff is entitled to relief. The School denies any remaining allegation in Paragraph 1 of the Complaint.

2. This civil action concerns the constitutionality of Plaintiff’s termination of employment as a Title I Reading Teacher at Frankton Elementary School, part of the Frankton-Lapel Community Schools, a public school system in Indiana.

ANSWER: The School admits that Plaintiff's Complaint arises out of her employment with the School and that Plaintiff worked at Frankton Elementary School as a Title I Interventionist, but denies that Plaintiff is entitled to relief. The School denies any remaining allegation in Paragraph 2 of the Complaint.

Jurisdiction and Venue

3. This action arises under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the Constitution of the United States.

ANSWER: The School admits that Plaintiff's Complaint purports to bring claims under 42 U.S.C. §§ 1983 and 1988 based on First Amendment violations (as applied to the School via the Fourteenth Amendment), but denies that Plaintiff is entitled to relief. The School denies any remaining allegation in Paragraph 3 of the Complaint.

4. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a).

ANSWER: Admitted.

5. This Court has the authority to provide declaratory relief under 28 U.S.C. § 2201 and 2202 and under Rule 57 of the Federal Rules of Civil Procedure. This Court has authority to provide preliminary and permanent injunctive relief under Rule 65 of the Federal Rules of Civil Procedure.

ANSWER: The School admits that the Court has the power to order declaratory and injunctive authority based on the authorities cited, but denies that Plaintiff is entitled to relief. The School denies any remaining allegation in Paragraph 5 of the Complaint.

6. This Court has personal jurisdiction over Defendants because they are domiciled in the State of Indiana or have otherwise made and established contacts within the State to permit the exercise of personal jurisdiction over them.

ANSWER: The School admits that the Court has personal jurisdiction over the School. Any remaining allegation in Paragraph 6 is moot in light of the Court's order on voluntary dismissal. (Dkt. 35.) To the extent it is not, the School denies any remaining allegation in Paragraph 6 of the Complaint.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because the facts giving rise to this action occurred, and Defendants reside, in this District.

ANSWER: Admitted.

Parties

8. Plaintiff Jennifer McWilliams resides in Frankton, Indiana and until February 14, 2020, was employed as a Title I Reading Teacher at Frankton Elementary School.

ANSWER: The School admits that Plaintiff was employed as a Title I Interventionist at Frankton Elementary School. The School lacks knowledge regarding where Plaintiff resides, and therefore denies the same. The School denies any remaining allegation in Paragraph 8 of the Complaint.

9. Defendant Frankton-Lapel Community Schools Building Corporation ("**Frankton Schools**") is the public school system for the towns of Frankton and Lapel, Indiana and was Plaintiff's employer. Frankton Schools' principal place of business is in Anderson, Indiana. Frankton Schools is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

ANSWER: The School admits that it is a school corporation as defined by Indiana Code section 20-18-2-16. The School admits that its administrative building is located in Anderson, Indiana. The phrase “at all times relevant to the Complaint” is vague and therefore the School denies any assertion in the sentence containing this phrase. The School denies any remaining allegation in Paragraph 9 of the Complaint.

10. Defendant Robert (“Bobby”) Fields is sued in his official capacity as the Superintendent for Frankton Schools. In his official capacity, it is his responsibility to oversee the administration of each school within the Frankton Schools system, including providing input on employment decisions and employment policy. Mr. Fields resides in Anderson, Indiana. Mr. Fields is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

ANSWER: The School admits that Robert Fields is the School’s current superintendent. The remaining allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

11. Defendant Ronda Podzielinski is sued in her official capacity as the Principal of Frankton Elementary School. In her official capacity, it is her duty to evaluate, hire, and fire teachers and employees in the school, with approval and input from the Superintendent and the school board. Ms. Podzielinski resides in Noblesville, Indiana. Ms. Podzielinski is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

ANSWER: The School admits that Ronda Podzielinski is the School’s current principal at Frankton Elementary School. The remaining allegations in this paragraph are wholly

concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

12. Defendant Kimberly (“Kimm”) Gray is sued in her official capacity as the Title I Program/Reading Director for Frankton Schools. In her official capacity, it is her duty to train and evaluate reading teachers in the program she oversees, as well as to provide input into any employment decisions impacting any reading teachers in the program she oversees. Ms. Gray resides in Noblesville, Indiana. Ms. Gray is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

ANSWER: The School admits that Kimberly Gray is the School’s Title I Program/Reading Director. The remaining allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

13. Defendant Frankton-Lapel Community Schools Board of School Trustees (“**Frankton Board**”) is the school board governing Frankton Schools. The Frankton Board approves all employment decisions, including employment policy, made in the Frankton Schools. The Frankton Board’s principal place of business is in Anderson, Indiana. The Frankton Board is a person within the meaning of 42 U.S.C. § 1983 and was acting under color of state law at all times relevant to this Complaint.

ANSWER: The School admits that it is governed by a seven-member board. The remaining allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

Facts

A. Red for Ed Movement

14. In the fall of 2019, teachers and administrators in Frankton Schools began discussing and supporting the “Red for Ed” movement in Indiana.

ANSWER: The School admits that the “Red for Ed” was a topic of discussion throughout Indiana and elsewhere during the Fall of 2019, including the School’s teachers and administrators. The School denies any remaining allegation in Paragraph 14 of the Complaint.

15. Red for Ed is a “movement” supported by the National Education Association¹ (“NEA”), the public school teachers’ union.

ANSWER: The School admits that that the National Education Association is a union that represents public school teachers and that it supported the Red for Ed movement. The School denies any remaining allegation in Paragraph 15 of the Complaint.

16. The Red for Ed movement is described on the NEA website as a “fight” for “students, educators, and communities.” *See* n. 1. Some of the stated goals of the Red for Ed movement include: “classrooms that are conducive to learning, a voice in shaping education policy, salaries that allow educators to afford to stay in the profession they love without having to work another job, and access to opportunities, no matter what you look like, where you’re from, or how much money your parents have.”

ANSWER: The statements on NEA’s website speak for themselves. The School denies any remaining allegation in Paragraph 16 of the Complaint.

¹ Information about the NEA as a union for public school teachers can be found at: <https://www.nea.org/home/2580.htm?cpsessionid=SID-7A80A481-D24FF22A>. Information regarding the NEA’s support of the Red for Ed movement can be found at: <http://neatoday.org/redford/>

17. Red for Ed places particular emphasis on public school teachers' salaries, the "pay gap" teachers allegedly have "[c]ompared to other professionals with the same education and years of experience," and what each state spends on education.

ANSWER: The School admits that the Red for Ed movement advocates for teacher-pay issues, among other issues affecting teachers. The School denies any remaining allegation in Paragraph 17 of the Complaint.

18. In the fall of 2019, Frankton Schools' teachers were encouraged to wear red t-shirts in order to promote the Red for Ed movement. Teachers were encouraged to talk about the Red for Ed movement if students or parents asked about it.

ANSWER: The School admits that its teachers' union, the Frankton-Lapel Education Association, encouraged teachers to promote the Red for Ed movement. The School denies any remaining allegation in Paragraph 18 of the Complaint.

19. Red for Ed involves issues of teachers' salaries, "education policy," "classrooms conducive to learning," and "access to opportunities" in public schools, which necessarily involve questions of state and local funding through taxation and a host of other political questions within the sphere of public discussion and debate. All of these questions are matters of public concern.

ANSWER: The School lacks knowledge regarding the exact parameters of what Red for Ed "involved" and therefore denies paragraph 19 of the Complaint.

20. Ms. McWilliams became concerned about some of the specific goals, methods, and tactics used by the Red for Ed movement.

ANSWER: The School lacks knowledge regarding the allegations in Paragraph 20 of the Complaint, and therefore denies the same.

21. Because of Ms. McWilliams' concerns regarding the Red for Ed movement, she started an Indiana chapter of "Purple for Parents" in the fall of 2019. Purple for Parents is a national organization that is dedicated to improving public education through empowering parents by: "preventing future teacher strikes, expanding school choice, responsibly funding schools and teachers, ending politicking in the classroom, ending indoctrination in schools, and adding resource officers to every school."²

ANSWER: The quotation from the website speaks for itself. The School lacks knowledge regarding the remaining allegations in Paragraph 21 of the Complaint, and therefore denies the same.

22. Ms. McWilliams did not advocate for Purple for Parents to students, parents, or teachers during school hours or on school property. She wore a Purple for Parents t-shirt or other purple t-shirt on some Wednesdays when other teachers wore Red for Ed t-shirts, but she discontinued wearing those shirts to school after reconsidering their appropriateness in light of her concerns about teachers wearing Red for Ed t-shirts to school. She had a few, very brief conversations with teachers regarding Purple for Parents during school hours, but only in response to questions other teachers asked her. None of those conversations were long, nor were they confrontational or contentious. Over the holiday season, Purple for Parents started receiving public recognition, including two articles published in local newspapers about the organization.

ANSWER: The School lacks knowledge regarding the allegations in Paragraph 22 of the Complaint, and therefore denies the same.

23. Around November of 2019, Ms. McWilliams was informed by Kimm Gray that she was being "investigated" because some teachers complained she had developed and taught

² See <https://www.purpleforparents.us/4-things-every-parent-can-do-right-now-to-improve-public-education/>

her reading students lessons about identifying “fake news.” Ms. McWilliams flatly denied she had ever taught such lessons or taught her students anything other than the approved school curriculum.

ANSWER: The School admits that Gray informed Plaintiff about allegations several teachers had made against her. The School further admits that Gray looked into the allegations (including discussing with Plaintiff), that Gray was unable to substantiate them, and that Gray told Plaintiff so. The School denies any remaining allegation in Paragraph 23 of the Complaint.

24. After Thanksgiving break, Ms. McWilliams was informed by Kimm Gray that the school officials determined the teachers who made the accusations against her were being untruthful. Ms. Gray confirmed that the “investigation” was resolved completely in Ms. McWilliams’ favor, and that the school found no evidence that Ms. McWilliams had ever taught anything other than approved school curriculum to her students.

ANSWER: The School admits that Gray looked into the allegations (including discussing with Plaintiff), that Gray was unable to substantiate them, and that Gray told Plaintiff so. The School denies any remaining allegation in Paragraph 24 of the Complaint.

25. On January 5, 2020, Ms. McWilliams sent an email to Frankton School Superintendent, Bobby Fields. In that email, Ms. McWilliams expressed concern about the Red for Ed “political operation” being promoted in the Frankton Schools and whether such promotion was in violation of Indiana law.³ She informed Mr. Fields she had concerns about:

³ Ms. McWilliams acknowledges that the Indiana law she referenced in her email, I.C. § 3-14-1-17, does not pertain to Red for Ed since it is not a “public question” defined as a “constitutional amendment, proposition, or other issue submitted to the electorate at an election.” I.C. § 3-5-2-41. As a lay person, Ms. McWilliams equated the obvious matters of public concern pertaining to Red for Ed with the specific legal definition of “public question.”

- using Frankton Schools email system to encourage staff to wear their red shirt on Wednesdays, with the approval of the administration, in order to promote Red for Ed;
- using Frankton Schools email system to encourage teachers to join a “rallying political fight on November 19, 2019” regarding Red for Ed, which included opinions and statistics on why teachers and staff should participate in this fight;
- an email on November 14, 2019, from Mr. Fields expressing his support for the Red for Ed movement—this email stated Mr. Fields was in favor of teachers missing school to attend the November 19th rally, but he would rather they “use a Flex Day” to make up the day, rather than an “E-Learning Day;”
- staff and administrators at Frankton Elementary Schools asking the students to wear red in support of Red for Ed during the week of November 19th (the week of the Red for Ed Rally);
- encouraging students and teachers to show their support for Red for Ed during the Frankton Elementary School intercom announcements on Monday, November 18, 2020;
- teachers emailing parents, encouraging the parents to send their kids to school wearing red in support of the Red for Ed movement; and
- red signs supporting Red for Ed on the Frankton Elementary school grounds.

In short, Ms. McWilliams expressed concern to Mr. Fields that all of these activities and promotions to the students, parents, and teachers were “political overreach” and an inappropriate use of school resources to promote a political agenda.

ANSWER: The School admits that Plaintiff sent Fields an email dated January 5, 2020, and that the email speaks for itself. The School denies any remaining allegation in Paragraph 25 of the Complaint.

26. Monday, January 6, 2020, was the first day Frankton Schools were back in session after winter break. On that day, Mr. Fields came to Frankton Elementary School and pulled Ms. McWilliams, Ms. Gray, and Ms. Podzielinski into a meeting. During this meeting, Mr. Fields told Ms. McWilliams that Red for Ed is “not political.” Mr. Fields said he had looked at Ms. McWilliams’ Facebook page and said she appeared to be a “far-right radical conspiracy theorist.” Throughout the rest of this meeting, Mr. Fields debated the politics surrounding the Red for Ed movement and engaged Ms. McWilliams in a conversation about her political beliefs. During this conversation, Mr. Fields stated that Ms. McWilliams “has a right to stand for what [she] believes in outside of school.”

ANSWER: The School admits that Plaintiff met with Fields, Gray, and Podzielinski on January 6, 2020. The School admits that they had a discussion that included addressing Plaintiff’s email to Fields from the prior day. The School denies any remaining allegation in Paragraph 26 of the Complaint.

27. In follow up email exchanges on January 7th, 12th, and 13th, Mr. Fields and Ms. McWilliams engaged in more back and forth regarding the goals of Red for Ed and the appropriateness of promoting the Red for Ed movement to students and parents during school hours.

ANSWER: The School admits that Plaintiff and Fields exchanged emails on these dates and that the emails speak for themselves. The School denies any remaining allegations in Paragraph 27 of the Complaint.

B. Leader in Me Curriculum

28. In addition to the Red for Ed promotions that began in earnest in the fall of 2019, Frankton Schools has adopted the use of the “Leader in Me” curriculum in its schools. The Leader in Me curriculum purports to be a “social emotional learning” curriculum designed to develop students’ skills in the area of leadership, conflict resolution, and social interactions.

ANSWER: The School admits that during the 2017-2018 school year, Frankton Elementary School used a program called “The Leader in Me” to help students develop leadership skills and foster positive relationships. The School denies any remaining allegation in Paragraph 28 of the Complaint.

29. The Leader in Me was a book authored by Stephen Covey. The curriculum was developed by Franklin Covey as a way for schools to incorporate the “7 Habits” principles developed by Stephen Covey into all aspects of the school’s culture.

ANSWER: The School admits that “The Leader in Me” is a program developed by FranklinCovey Education and that it incorporates the seven habits of leadership and behavior. The School denies any remaining allegation in Paragraph 29 of the Complaint.

30. Ms. McWilliams has concerns about the widespread incorporation of the Leader in Me curriculum into Frankton Schools. She is concerned that:

- the curriculum is largely based on church doctrine and results in an inappropriate combination of church and state;

- the curriculum encroaches on the teachings of morals and values, usurping the parents' primary role for such teachings in their children's lives;
- time dedicated to Leader in Me activities takes away from time better spent in academic learning;
- parents had no way to "opt out" of the curriculum as it is incorporated in virtually every aspect of the school's culture and programming;
- Frankton Schools would begin mentoring other schools to implement the Leader in Me curriculum; and
- part of the teachers' evaluations were based on how well he or she implemented the curriculum.

ANSWER: The School lacks knowledge regarding the allegations in Paragraph 30 of the Complaint, and therefore denies the same.

31. Ms. McWilliams always participated in any Leader in Me activity, lesson, etc. required as a part of her employment. Ms. McWilliams never received any negative feedback or evaluation on her job performance. In fact, all of the feedback Ms. McWilliams received from Ms. Gray (her direct supervisor) on her job performance was positive.

ANSWER: The School lacks knowledge that Plaintiff "always participated" in "The Leader in Me," and therefore denies the same. The School denies any remaining allegation in Paragraph 31 of the Complaint.

32. Ms. McWilliams never discussed her concerns about the Leader in Me curriculum with students.

ANSWER: The School lacks knowledge that Plaintiff “never discussed” her concerns about “The Leader in Me” with students, and therefore denies the same. The School denies any remaining allegation in Paragraph 32 of the Complaint.

33. Ms. McWilliams never discussed her concerns about the Leader in Me curriculum with parents on school property or during school hours.

ANSWER: The School lacks knowledge that Plaintiff “never discussed” her concerns about “The Leader in Me” with parents on school property, or during school hours. The School denies any remaining allegation in Paragraph 33 of the Complaint.

C. Facebook Post and Termination Meeting

34. On Monday, February 10, 2020, Ms. McWilliams posted some information and comments on her personal Facebook page expressing her concerns about the Leader in Me curriculum. The concerns she posted mirrored her concerns detailed in paragraph 30 of this Complaint.

ANSWER: The School admits that Plaintiff posted information and comments on her Facebook page regarding the “Leader in Me” program and that such information and comments speak for themselves. The School denies any remaining allegation in Paragraph 34 of the Complaint.

35. Ms. McWilliams posted this information on her personal Facebook page at 4:33pm, which is after school hours. She used her personal computer and personal cell phone to post and comment on her personal Facebook page. She was at home when she posted this information, not on school property.

ANSWER: The School lacks knowledge regarding the allegations in Paragraph 35 of the Complaint, and therefore denies the same.

36. On Friday, February 14, 2020, Ms. McWilliams was called into a meeting with Ms. Podzielinski and Ms. Gray.

ANSWER: Admitted.

37. During that meeting, Ms. Podzielinski told Ms. McWilliams that she had the choice to resign or be terminated from her position as a Title I teacher.

ANSWER: The School admits that during the February 14, 2020, meeting, either Podzielinski or Gray told Plaintiff to the effect that she could resign or be terminated. The School denies any remaining allegation in Paragraph 37 of the Complaint.

38. When Ms. McWilliams asked why she was being fired, Ms. Podzielinski and Ms. Gray stated Ms. McWilliams said things concerning the reputation of the school that were affecting teacher morale. They expressed concerns about her being a team player and spreading information that was untruthful about the school. When pressed by Ms. McWilliams about what specific statements she had made that were of concern, Ms. Podzielinski and Ms. Gray pointed to statements Ms. McWilliams had made in her personal Facebook post of February 10th.

ANSWER: The School admits that it terminated Plaintiff's employment based on the untruthful information in her Facebook comments. The School further admits that during the February 14, 2020, meeting, Plaintiff, Podzielinski, and Gray had some discussion about the impact of Plaintiff's Facebook comments. The School denies any remaining allegation in Paragraph 38 of the Complaint.

39. Ms. McWilliams mentioned to Ms. Gray and Ms. Podzielinski that she expressed those concerns on her personal Facebook page, and that as a parent (Ms. McWilliams' daughter was enrolled at Frankton Elementary), she had a right to express concern about curriculum.

ANSWER: The School admits that during the February 14, 2020, meeting, Plaintiff made comments to this effect. The School denies any remaining allegation in Paragraph 39 of the Complaint.

40. Ms. Gray and Ms. Podzielinski told Ms. McWilliams that “ultimately, everything every one of us does is for the school.” Ms. Gray told Ms. McWilliams that if she disagreed with school programs, those disagreements could not be shared outside of school because they would reflect badly on Ms. Podzielinski.

ANSWER: The School admits that during the February 14, 2020, meeting, Plaintiff, Podzielinski, and Gray had some discussion about the impact of Plaintiff’s Facebook comments. The School denies that Gray said the quote that is attributed to her. The School denies any remaining allegation in Paragraph 40 of the Complaint.

41. Ms. McWilliams confirmed with Ms. Gray and Ms. Podzielinski that she was being fired for one social media post she made on her personal Facebook page. Ms. McWilliams refused to resign and Ms. Gray and Ms. Podzielinski then terminated her employment as a Title I Reading Teacher at Frankton Elementary.

ANSWER: The School admits that it terminated Plaintiff’s employment based on her February 10, 2020, Facebook post and comments. The School denies any remaining allegation in Paragraph 41 of the Complaint.

42. At the time of Ms. McWilliams’ employment, the Frankton Schools Employee Handbook did not include any policy on personal social media posts. The 2019-2020 Frankton Elementary Staff Handbook states, in relevant part:

We are all proud members of the education profession. Our acts and words should always work toward enhancing the dignity of our profession and ourselves. We are the people primarily responsible for the perception the public has of education. Everything we do and

say either strengthens or weakens our image. Please be sure that all your interactions with students, parents and colleagues are conducted in a professional manner, whether in person or on social media.

ANSWER: The Frankton Elementary School’s staff handbook speaks for itself. The School denies any remaining allegation in Paragraph 42 of the Complaint.

43. Because of the written and implied policy of the Frankton Schools, teachers and staff believe it is the school policy that the staff cannot post “anything negative” about the school on their private social media accounts.

ANSWER: Denied.

COUNT I:

First Amendment Retaliation

U.S. Const. Amend. I

(42 U.S.C. § 1983)

Against Defendants Ms. Podzielinski and Ms. Kimm Gray

44. Plaintiff re-alleges and incorporates by reference all previous allegations.

ANSWER: The School incorporates its answers to Plaintiff’s previous allegations.

45. At all material times, Ms. McWilliams was engaged in constitutionally protected activity, exercising her clearly established First Amendment rights to speak as a private citizen on a matter of public concern.

ANSWER: Denied.

46. At all material times, Ms. McWilliams was speaking as a private citizen and was not speaking as part of her official duties as a Title I Reading Instructor at Frankton Elementary School. *See Pickering v. Bd. of Educ.*, 391 U.S. 563, 564 (1968); *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

ANSWER: Denied.

47. At all material times, Ms. McWilliams was speaking on matters of public education, public school curriculum, public school funding, and government taxation—all well-established areas of public concern. *See Connick v. Myers*, 461 U.S. 138 (1983).

ANSWER: Denied.

48. Defendants Podzielinski and Gray, acting under the color of state law, terminated Ms. McWilliams' employment as a Title I Reading Teacher, causing direct adverse action against Ms. McWilliams. *See* I.C. § 20-26-5-4.5.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

49. Defendants Podzielinski and Gray were motivated to take this adverse employment action against Ms. McWilliams in whole or in part because of Ms. McWilliams' constitutionally protected speech.

ANSWER: Denied.

50. Defendants Podzielinski's and Gray's adverse employment action violated Ms. McWilliams' clearly established First and Fourteenth Amendment rights and was unlawful in light of clearly established law. No reasonable person would have believed otherwise, given the state of the law and Defendants' motivations. Defendants are liable under 42 U.S.C. § 1983.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

51. Neither Defendant Podzielinski nor Defendant Gray is entitled to qualified immunity because Ms. McWilliams' constitutional rights were clearly established at the time they fired her, and because qualified immunity does not apply to requests for declaratory or injunctive relief.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

52. As a direct and proximate result of Defendant Podzielinski's and Defendant Gray's unlawful activity, Ms. McWilliams has suffered harm by being deprived of her employment in Frankton Schools, and her employment record is tarnished, which will lead to decreased future employment options.

ANSWER: Denied.

COUNT II:

First Amendment Retaliation

U.S. Const. Amend. I

(42 U.S.C. § 1983)

Against Defendant Bobby Fields

53. Plaintiff re-alleges and incorporates by reference all previous allegations.

ANSWER: The School incorporates its answers to Plaintiff's previous allegations.

54. Defendant Bobby Fields, acting under the color of state law, as Superintendent of Frankton Schools, is responsible for overseeing the schools in the district on policy and employment decisions, including Frankton Elementary School. *See* I.C. § 20-26-5-4.5.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

55. As Superintendent, Bobby Fields displayed a history of criticizing Ms. McWilliams' constitutionally protected speech concerning Red for Ed when he called her a "far right wing conspiracy theorist" in front of her direct supervisor, Ms. Gray, and the school principal, Ms. Podzielinski. That this criticism happened at school, in the context of an employment disciplinary meeting, caused harm to Ms. McWilliams by effectively labeling her as a "troublemaker" for exercising her constitutional right to free speech.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

56. As Defendant Fields is responsible for overseeing employment decisions at Frankton Elementary School, he was aware of the motivation for the adverse employment action taken against Ms. McWilliams.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

57. Defendant Fields' adverse employment action violated Ms. McWilliams' clearly established First and Fourteenth Amendment rights and was unlawful in light of clearly established law. No reasonable person would have believed otherwise, given the state of the law and Defendant's motivations. Defendant Fields is liable under 42 U.S.C. § 1983.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

58. Defendant Fields is not entitled to qualified immunity because Ms. McWilliams' constitutional rights were clearly established at the time she was fired, and because qualified immunity does not apply to requests for declaratory or injunctive relief.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

59. The combination of Defendant Fields' January employment disciplinary meeting and his approval and oversight of Ms. McWilliams' employment termination establishes a pattern of adverse employment actions based upon Ms. McWilliams' exercise of First Amendment rights.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

60. As a direct and proximate result of Defendant Fields' unlawful activity, Ms. McWilliams has suffered harm by being deprived of her employment in Frankton Schools, and her employment record is tarnished, which will lead to decreased future employment options.

ANSWER: The allegations in this paragraph are wholly concerned with claims that have been voluntarily dismissed. (Dkt. 35.) To the extent a response is required, the School denies them.

COUNT III:

First Amendment Retaliation

U.S. Const. Amend. I

(42 U.S.C. § 1983)

**Against Defendants Frankton-Lapel Community Schools Building Corporation and
Frankton-Lapel Community Schools Board of School Trustees**

61. Plaintiff re-alleges and incorporates by reference all previous allegations.

ANSWER: The School incorporates its answers to Plaintiff's previous allegations.

62. Defendants Frankton Schools and the Frankton Board, acting under the color of state law, are ultimately responsible for policy and employment decisions at all the schools within the Frankton-Lapel school district, including Frankton Elementary School. *See* I.C. § 20-26-5-4.5.

ANSWER: The School admits that it is responsible for policy and employment decisions at its schools. The School denies any remaining allegation in Paragraph 62 of the Complaint.

63. Frankton Schools and the Frankton Board have established written policies which give its employees the impression that they cannot ever, even on their own time, criticize Frankton Schools or its curriculum or funding decisions that are matters of broad public concern. This policy is impermissibly broad under the First Amendment to the U.S. Constitution.

ANSWER: Denied.

64. As Defendants Frankton Schools and the Frankton Board are ultimately responsible for employment decisions and policy at Frankton Elementary School, they were aware of the motivation for the adverse employment action taken against Ms. McWilliams.

ANSWER: Denied.

65. Defendants Frankton Schools' and the Frankton Board's adverse employment action violated Ms. McWilliams' clearly established First and Fourteenth Amendment rights and were unlawful in light of clearly established law. No reasonable person would have believed otherwise, given the state of the law and Defendants' motivations. Defendants Frankton Schools and the Frankton Board are liable under 42 U.S.C. § 1983.

ANSWER: Denied.

66. Defendants Frankton Schools and the Frankton Board are not entitled to qualified immunity because Ms. McWilliams' constitutional rights were clearly established at the time she was fired, and because qualified immunity does not apply to requests for declaratory or injunctive relief.

ANSWER: Denied.

67. As a direct and proximate result of Defendants Frankton Schools' and the Frankton Board's unlawful activity, Ms. McWilliams has suffered harm by being deprived of her employment in Frankton Schools, and her employment record is tarnished, which will lead to decreased future employment options.

ANSWER: Denied.

ADDITIONAL DEFENSES

The School alleges and states the following additional defenses:

1. Any action the School took regarding Plaintiff was taken in good faith and for legitimate, non-discriminatory, and non-retaliatory reasons.
2. Plaintiff is not entitled to attorney fees or other relief requested.
3. Plaintiff has failed to mitigate damages.

4. To the extent any of Plaintiff's claims are untimely under the applicable statute of limitations, such claims are barred.

5. Plaintiff's damages are subject to offset based on subsequent income she received.

6. Plaintiff's damages are limited or foreclosed by the doctrine of after-acquired evidence.

7. The School reserves the right to amend this Answer and to assert additional defenses that may arise in the course of the investigation and discovery and further incorporates all defenses available under Fed. R. Civ. P. 8(c) as if fully set forth herein.

WHEREFORE Defendant Frankton-Lapel Community Schools, by counsel, respectfully requests that Plaintiff take nothing by way of the Complaint, for the costs of this action, and for any and all other just and proper relief in the premises.

Respectfully Submitted,

/s/ Brent R. Borg

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CERTIFICATE OF SERVICE

I certify that on July 20, 2020, I electronically filed a true and exact copy of the foregoing via the Court's Electronic filing system. Notice of this filing was sent to the following counsel of record via the Court's Electronic filing system:

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