No. _____

In the
Supreme Court of the United States

JEANNE HEDGEPETH,

Petitioner,

v.

JAMES A. BRITTON, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

For 20 years, petitioner Jeanne Hedgepeth was a teacher at Palatine High School in Illinois. While on summer vacation in Florida, she posted several comments on her private Facebook page criticizing political unrest following the death of George Floyd. The school district fired Hedgepeth after administrators deemed her core protected speech "disrespectful, demeaning of other viewpoints, and racist." In any other context, such blatant viewpoint discrimination by government officials would be a non-starter. But because Hedgepeth is a public employee, the Seventh Circuit held that the First Amendment does not bar the government from firing her based on the views she expressed in off-the-job speech on topics unrelated to her work. The court recognized that Hedgepeth's Facebook posts constituted core political speech on matters of public concern. It did not matter. Invoking the balancing test set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968), the court held that the school's interest in "avoiding disruption"—specifically, emails and phone calls from some members of the public (most of whom had no direct connection to the school) "expressing concern or outrage" about Hedgepeth's summer vacation posts—"outweighs her right to speak."

The question presented is:

Whether and in what circumstances public employers may discipline employees based on their expression of controversial views while off the job.

PARTIES TO THE PROCEEDING

Petitioner Jeanne Hedgepeth was the plaintiff-appellant below.

Respondents Board of Education of Township High School District No. 211, James A. Britton, Kimberly Cavill, Anna Klimkowicz, Robert J. LeFevre, Jr., Steven Rosenblum, Lisa A. Small, and Edward M. Yung were the defendants-appellees below.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Hedgepeth v. Britton, et al.*, No. 21-cv-3790 (N.D. Ill.), judgment entered on February 20, 2024.
- *Hedgepeth v. Britton, et al.*, No. 24-1427 (7th Cir.), judgment entered on August 26, 2025.

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After petitioner Jeanne Hedgepeth spent 20 years as a social studies teacher, Palatine High School taught its students a very bad civics lesson by firing her for engaging in core political expression while off the job. Amid the national political discussion following the death of George Floyd, Hedgepeth posted several comments on her private Facebook page while on summer vacation in Florida. In the first of those posts, she included vacation photos and said, "I don't want to go home tomorrow. Now that the civil war has begun I want to move." App.21. In the second, she reposted a meme stating, "Wanna stop the [r]iots? Mobilize the septic tank trucks, put a pressure cannon on em … hose em down … the end." App.21. And in the third, she said that she "f[ou]nd the term 'white privilege' as racist as the 'N' word," and criticized "race baiters like Jesse Jackson and Al Sharpton" while praising "Thomas Sowell," "Candace Owens," and "Larry Elder[]" for "speak[ing] the truth with a great sense of humor and FACTS not feelings." App.22 & n.3.

Whatever else one may think of those posts, they are plainly speech on matters of public concern. And in a Nation that values the First Amendment, one would expect the government—especially a public high school—to remind people that core political speech is constitutionally protected and that the proper way to address speech with which one disagrees is more speech, not censorship. Rather than reinforcing that foundational lesson, the school district summarily fired Hedgepeth after deeming her protected speech on a private Facebook account during

summer vacation "disrespectful, demeaning, dismissive of other viewpoints, and racist." App.95.

In any other context, such blatant viewpoint discrimination by government officials would be a non-starter. But because Hedgepeth is a public employee, the school district believed it could play censor, and the Seventh Circuit approved. Invoking the balancing test set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968), the court held that the school's interest in "avoiding disruption"—not in-classroom disruption, but emails and phone calls from people, typically with no direct connection to the school, who did not like Hedgepeth's speech—outweighed her right to speak on her private Facebook account on matters unrelated to her job during summer break. App.13-14. Adding insult to injury, the court not only insisted that Hedgepeth's use of what it deemed "vulgar language" and "jokes" somehow "weaken[ed] her speech interests," but engaged in some viewpoint discrimination of its own, concluding that she "lost her job because she posted a series of vulgar, intemperate, and racially insensitive messages." App.14, 17.

That decision radically undervalues free speech and cannot be reconciled with decisions from this Court and others. As several circuits have correctly recognized, nothing in *Pickering* or any other case from this Court suggests that public employers can engage in blatant viewpoint discrimination simply because some in (or even far outside) the workplace do not like an employee's views. To the contrary, the Court has repeatedly rejected the notion—including in the public high school setting—that protected speech must "give way to a 'heckler's veto.'" *Kennedy v.*

Bremerton Sch. Dist., 597 U.S. 507, 543 n.8 (2022). That is particularly true when the speech is far removed from the schoolhouse in every dimension. It could hardly be otherwise, as "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972).

This is an ideal vehicle to "make clear that public employers cannot use *Pickering-Garcetti* balancing generally or unsupported claims of disruption in particular to target employees who express disfavored political views." *MacRae v. Mattos*, 145 S.Ct. 2617, 2621 (2025) (Thomas, J., respecting the denial of certiorari). "Speech on matters of public concern is at the heart of the First Amendment's protection" and "cannot be restricted simply because it is upsetting or arouses contempt." *Snyder v. Phelps*, 562 U.S. 443, 451-52, 458 (2011). Schools have a right to insist that a social studies teacher teach social studies, not math, and to ensure that speech in the classroom is non-disruptive. But they cannot use that limited authority to play censor over speech that occurs outside the classroom via private channels during summer break—particularly when the speech is unrelated to job responsibilities. Yet under the Seventh Circuit's capacious view of *Pickering*, schools may do just that under the guise of "avoiding disruption."

That result cannot be reconciled with *Pickering* itself, let alone with the long line of cases admonishing that there is no heckler's veto exception to the First Amendment. Whatever latitude public employers may have to restrict speech to avoid genuine

workplace disruption, it does not extend to firing employees for engaging in private, off-duty speech simply because school officials must field some complaints from people with little connection to the school. If *Pickering* really permitted core speech rights far removed from the schoolhouse gates to be balanced away so cavalierly, then it would be irreconcilable with the First Amendment. The Court should take this opportunity to make clear once again that public employees do not shed all free speech rights, especially when they engage in core political expression a thousand miles from the schoolhouse gates.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 152 F.4th 789 and reproduced at App.1-17. The district court's opinion is reported at 2024 WL 689959 and reproduced at App.18-48.

JURISDICTION

The Seventh Circuit issued its opinion on August 26, 2025. Justice Barrett extended the time to file a petition to January 8, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment is reproduced at App.148.

STATEMENT OF THE CASE

A. Legal Framework

This Court has long held that "public employment, including academic employment, may [not] be conditioned upon the surrender of constitutional rights which could not be abridged by

direct government action." *Keyishian v. Bd. Regents*, 385 U.S. 589, 605 (1967). So "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines*, 393 U.S. 503, 506 (1969). That said, the Court has also recognized that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general," including an interest "in promoting the efficiency of the public services it performs through its employees." *Pickering*, 391 U.S. at 568.

Unsurprisingly, those interests often come into "conflict[]" with an employee's "claim[] of First Amendment protection." *Id.* at 569. To resolve that tension, this Court fashioned a balancing test under which public-employee speech on matters of public concern may be restricted only if the state's interest outweighs the employee's interest in speaking. *Id.* at 568. In doing so, however, the Court reiterated the general rule that a school's interest "in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public." *Id.* at 573. And the Court has since made clear that "public employers [can]not use authority over employees to silence discourse … simply because superiors disagree with the content of employees' speech." *Rankin v. McPherson*, 483 U.S. 378, 384 (1987). Moreover, when it comes to student speech, this Court has emphasized that the school's interest in policing speech and avoiding "disruption" is

substantially reduced when the speech occurs off campus. *See Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 189-90 (2021).

B. Factual and Procedural Background

1. Jeanne Hedgepeth was a social studies teacher at Palatine High School in Illinois for 20 years. App.2. While there, she was committed to fostering a welcoming environment for her students. She sponsored the Gay, Straight Alliance and volunteered for a non-bullying initiative. App.129. Hedgepeth organized and moderated forums where students and staff could discuss sensitive issues like sex and gender. *Id.* And she produced a video featuring interviews with students that extolled diversity at Palatine, which was shown to the entire school in 2020. App.130.

Outside the classroom, Hedgepeth was politically engaged and often exchanged views on pressing issues with her Facebook friends. App.127-28. Hedgepeth set her Facebook account to private so that only "friends" could view her posts. Her Facebook profile did not identify her as a Palatine employee. *See* App.126. It was Hedgepeth's longstanding practice to decline "friend" requests from current students. App.127. And while she would accept friend requests from former students, she did not extend such invitations herself. *Id.*

As the Nation grappled with the aftermath of George Floyd's death in May 2020, Hedgepeth took to her private Facebook page to voice some thoughts. School was out for summer, and Hedgepeth was literally a thousand miles away on vacation in Florida. App.3. She posted pictures of her beachfront view

with the caption: "I don't want to go home tomorrow. Now that the civil war has begun I want to move." *Id.* A friend responded, "Follow your gut! Move!!!!!!!" *Id.* Hedgepeth replied, "I need a gun and training." *Id.* Hedgepeth also reposted a satirical meme that read, "Wanna stop the [r]iots? Mobilize the septic tank trucks, put a pressure cannon on em … hose em down … the end." *Id.* Hedgepeth added: "You think this would work?" *Id.*

Around the same time, Hedgepeth exchanged thoughts with a Palatine graduate on Facebook. App.3-4. After an exchange about current events, the twenty-five-year-old graduate told Hedgepeth to "shut up with your white privilege." App.120. Hedgepeth responded: "I am about facts, truth-seeking[,] and love. I will speak on any topic I choose because I live in a free country. I find the term 'white privilege' as racist as the 'N' word." App.75. She then opined that "[t]he people I am informed by about the black experience in America are actually some of the smartest people in America." App.76. She recommended that the woman study Thomas Sowell, Candace Owens, and Larry Elder. App.76. And she pressed the woman to consider whether "there is a deeper problem" when "50% of murders in America are committed by 13% of the population," and whether "there might be a subtle genocide of black babies when … 30% of abortions are black babies," although "black women only make up 7% of the U.S. population." App.76.

2. Over the next several days, the school district received several complaints about Hedgepeth's posts. App.137. The overwhelming majority of those

complaints were not from current Palatine students, parents, or faculty. In fact, of the 76 unique emails received from members of the community, only three were from current Palatine students, and one of those expressed support for Hedgepeth. App.137.[1] Six were from parents of current Palatine students, and only two of those criticized Hedgepeth. *Id.* The lone written communication from a fellow teacher expressed support for Hedgepeth. App.143.

The bulk of the criticisms from the few current students or parents had nothing to do with Hedgepeth's capability as a high school social studies teacher, and everything to do with her off-campus speech on matters of public concern. For example, one student email complained that Hedgepeth "said some very controversial and insensitive things revolving around the current issue of racism and privilege." D.Ct.Dkt.54-3 at 26-27. "Ms. Hedgepeth," the email continued, "works in a diverse community where we need to be progressive and with this Facebook post she is invalidating POC's negative experiences by denying her advantages in a country founded by white people, for white people." *Id.* "As students of color," the email said, "we feel angered by Ms. Hedgepeth's statements and feel that she should no longer have a place as staff at PHS." *Id.* "We don't want a teacher at Palatine who believes we are being dramatic when a racist act has been done against us." *Id.* Another student complained that "Ms. Hedgepeth made some uncomfortable post and comments," and said, "it is

[1] While the district received 113 emails, several were duplicative. App.137.

unsettling that there is a teacher who thinks like this at the school I attend." D.Ct.Dkt.54-3 at 231.

The two Palatine parents who complained likewise focused on their dislike of the views Hedgepeth expressed. One said she found Hedgepeth's remarks "offensive" and "racially insensitive" and did not want her son "exposed to her beliefs." D.Ct.Dkt.54-3 at 73. Another said she did "not feel comfortable" with Hedgepeth's "rhetoric" and thought her statement that she "need[ed] to get a gun" could "be viewed" as "enticing violence," including "school shootings." D.Ct.Dkt.54-3 at 86.

The remaining emails were from individuals who did not claim to be current students, parents, or teachers at Palatine. And a large chunk of them were based on templates that appear to have been part of an organized effort led by a local activist who was considering running for the school district's board. App.137, 139; *see* App.140. As one school board member described, the emails were "orchestrated" and "part of an organized network from a community activist to discredit a teacher of over 20 years." App.139.

In response to the email campaign, the district issued a press statement clarifying that Hedgepeth's posts "do not reflect the values or principles of District 211." App.80. Some media outlets began to pick up the dispute. App.79.

As the monthly school board meeting approached, some members of the public submitted written comments about Hedgepeth. Forty-four were critical of her speech. App.139. Once again, that criticism overwhelmingly came from people with no current ties

to Palatine and bore the same formulaic hallmarks as the coordinated email campaign. App.139. Only two critical comments came from current Palatine students, and only two from parents of current students. App.139. By the next board meeting, the controversy had died down; just two people directly criticized Hedgepeth. App.138. Yet at the close of that meeting, the board voted to commence dismissal proceedings against Hedgepeth based on "emails and phone calls expressing concern or outrage about [her] posts" and the related "media coverage." App.51.

The board members who voted for Hedgepeth's dismissal and the district officials who recommended it did not hide their disdain for the views she had expressed. In its Notice of Charges, the board charged Hedgepeth with making "racially charged" comments that "devalue and demean" and "reveal your biases and are inconsistent with the values the District upholds." App.51-53. District Superintendent Lisa Small declared herself "appalled" by Hedgepeth's statements and insisted that Hedgepeth's "biases of racism are definitely showing." App.143. James Britton, the Director of Human Resources, "described Plaintiff's speech as biased against Black Americans." App.143. One board member declared Hedgepeth "a racist," and another said her statements "traffic in racial stereotypes and racial tropes." App.143, 146.

Meanwhile, despite voting to fire Hedgepeth for expressing controversial views on social media, another board member continued to do just that. Less than six weeks after the vote, the board member tweeted about the upcoming election: "America [i]s in the process of choosing whether to be a white

nationalist fascist state or an inclusive democracy." App.144. A few months later, she tweeted in response to a speech by Justice Alito: "Roses are red, violets are blue, Plan B prevents ovulation, so screw you." App.144.

3. Hedgepeth requested a dismissal hearing before the Illinois State Board of Education. As she awaited a decision (for over two years), she filed this lawsuit against the school district, its board members, Small, and Britton (collectively, "the district"), arguing that her termination violated the First Amendment. As the federal suit proceeded, the hearing officer issued a decision recommending that Hedgepeth be dismissed. App.27-28.

Meanwhile, the district court granted summary judgment to the district. App.19. The court held that Hedgepeth was collaterally estopped by the board's judgment from bringing a First Amendment claim. App.28-35. But it then addressed the merits anyway, and concluded that the district's "interest in addressing the disruption caused by [Hedgepeth's] Facebook posts outweighed her speech interests." App.37. The court acknowledged that Hedgepeth's private speech "was on a matter of public concern." App.39. But because her "chosen genre and medium of expression—hyperbolic or satirical social media posts and a back-and-forth discussion with a friend—are toward the less serious, less significant end of the spectrum of works of public commentary," the court deemed it "not the type of public-employee speech that demands 'particularly convincing reasons' by defendants to justify its restriction." App.39. And though the district conceded that Hedgepeth's "speech

did not disrupt classroom or instructional activities or after-school or extracurricular activities" since "school was not in session," App.137, the court nevertheless concluded that the complaints about Hedgepeth's speech constituted "ample" evidence of "actual disruption." App.41. While the court acknowledged the concern that dismissing Hedgepeth "based on public reaction to her speech" "amount[ed] to a 'heckler's veto,'" it held that "[t]he government's interest in maintaining public perception is an inherent part of its operations." App.42-43.

The Seventh Circuit affirmed. The court declined to address the preclusion issue, instead focusing on *Pickering* balancing. App.7-8. The court acknowledged that "[t]here is no dispute that Hedgepeth spoke, through her … Facebook posts, as a citizen on a matter of public concern." App.9. But it held that "the District's interest in addressing actual disruptions and averting future disruption outweighed Hedgepeth's speech interests." App.11.

Like the district court, the Seventh Circuit insisted that Hedgepeth's speech interest was "weak[]" because she used what the court described as "vulgar language" and "jokes." App.14. The court further posited that *Pickering* "presumptively elevate[s] a teacher's expressive interest over the employer's interest in avoiding disruption" only when the teacher's speech involves "specialized expertise or knowledge gained through her status as a public employee." App.13-14.

Conversely, the court claimed "a wealth of undisputed evidence of the actual disruption at PHS engendered by Hedgepeth's posts." App.11. The court

did not dispute that the majority of complaints came from members of the general public, not current students, parents, or teachers. App.11-13. And it took no issue with the district's concession that Hedgepeth's "speech did not disrupt classroom or instructional activities or after-school or extracurricular activities" since "school was not in session," App.137, or with the statistics that Hedgepeth relied on in her posts (which the district never bothered to check). App.124. Nevertheless, the court claimed that the complaints and media attention generated by opposition to Hedgepeth's speech constituted sufficient "disruption" to override her First Amendment rights. The court also noted that Hedgepeth had been disciplined twice in the past for using profanity *in the classroom*, and puzzlingly described those incidents as involving "similar violations of the District's decorum policies." App.13.

As for the heckler's veto concern, the court deemed that argument "squarely foreclose[d]" by circuit precedent, positing that it "does not account for the unique relationship Hedgepeth has to her audience as a public school teacher and therefore a role model for others in the PHS community." App.15-16. In the court's view, "PHS community members, including current students who predictably saw her posts, are not outsiders seeking to heckle Hedgepeth into silence, rather they are participants in public education." App.16. The court concluded by engaging in some viewpoint discrimination of its own, chastising Hedgepeth for her "series of vulgar, intemperate, and racially insensitive messages to a large audience of recent PHS alumni." App.17.

REASONS FOR GRANTING THE PETITION

"This case is the latest in a trend of lower court decisions that have misapplied [this Court's] First Amendment precedents in cases involving controversial political speech." *MacRae*, 145 S.Ct. at 2620 (Thomas, J.). And it provides an excellent vehicle for the Court to "make clear that public employers cannot use *Pickering-Garcetti* balancing generally or unsupported claims of disruption in particular to target employees who express disfavored political views." *Id.* at 2621. Indeed, this case is the *ne plus ultra* of using vague claims of disruption to punish political speech that is far removed from the classroom temporally, geographically, and topically. The district essentially admits that it fired Hedgepeth because people in the community expressed disapproval of the views she expressed in core political speech on her private Facebook page over summer vacation. Yet rather than admonish the district for engaging in blatant viewpoint discrimination in pursuit of ideological orthodoxy, the Seventh Circuit sanctioned it, insisting that vague notions of avoiding "disruption" empower school boards to play censor and remove teachers who express views at odds with their own.

That startling result cannot be reconciled with the First Amendment or this Court's teaching that "public employers [can]not use authority over employees to silence discourse … simply because superiors disagree with the content of employees' speech," *Rankin*, 483 U.S. at 384, or the long line of cases rejecting the notion that the speech rights of public employees can be overridden by a heckler's veto. Nor can it be

reconciled with decisions from several other circuits correctly recognizing that public schools cannot fire teachers for what they say on their own time simply because their speech generates some complaints from people who do not share their views. And it exacerbates circuit splits on what kind of "disruption" is cognizable under *Pickering*, whether and to what extent the views of people outside the workplace factor into the balance, and whether messages conveyed through humor, satire, or what some may view as "vulgarity" are entitled to less First Amendment protection.

The Seventh Circuit's decision is not just wrong, but dangerous. It threatens to chill the core political speech of the Nation's millions of public employees even when they are on summer vacation a thousand miles from the schoolhouse gates. It threatens to deprive public schools of people who hold the diverse perspectives students need to encounter to ensure that they are equipped to respond to views with which they may disagree. And it teaches students the alarming lesson that views outside the mainstream should be silenced, not protected. If *Pickering* really allows core First Amendment rights to be balanced away in this fashion, then that test is incompatible with the First Amendment itself. If not, then the decision below is indefensible, and the need for clarification is undeniable. Either way, the need for this Court's intervention is manifest.

I. The Decision Below Cannot Be Reconciled With A Proper Understanding Of This Court's Precedents Or Core First Amendment Values.

1. It is a "bedrock principle" that speech may not be suppressed because some find it "offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). A "law disfavoring 'ideas that offend'" is the "essence of viewpoint discrimination." *Iancu v. Brunetti*, 588 U.S. 388, 393, 396 (2019). The "core First Amendment principle of viewpoint neutrality applies in the *Pickering-Garcetti* context as elsewhere." *MacRae*, 145 S.Ct. at 2620 (Thomas, J.). To be sure, the government has leeway to restrict employee speech that interferes with "the effective functioning of the public employer's enterprise." *Rankin*, 483 U.S. at 388. But "public employers do not have a free hand to engage in viewpoint discrimination toward their employees." *Amalgamated Transit Union v. Port Auth.*, 39 F.4th 95, 109 (3d Cir. 2022). That is equally true when it comes to public schools. Neither teachers nor students "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Kennedy*, 597 U.S. at 527. And they certainly do not lose their rights to address matters of public concern when they are a thousand miles removed from the schoolhouse gates during the summer.

Put simply, *Pickering* and its progeny apply a balancing test, but they do not authorize viewpoint discrimination or the balancing away of core constitutional protections based on vague and capacious notions of "disruption." Expressing

unorthodox views on matters of public concern is not the kind of "disruption" that authorizes school officials to play censor. After all, it has been black-letter law and an article of constitutional faith for nearly a century that "no official, high or petty, can prescribe what shall be orthodox in politics." *W.V. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Because "the threat of dismissal from public employment is … a potent means of inhibiting speech" and enforcing orthodoxy, *Pickering*, 391 U.S. at 574, "[v]igilance is necessary to ensure that public employers do not use authority over employees to silence discourse … simply because superiors disagree with the content of employees' speech," *Rankin*, 483 U.S. at 384. "That some may not like the political message being conveyed is par for the course and cannot itself be a basis for finding disruption of a kind that outweighs the speaker's First Amendment rights." *Dodge v. Evergreen Sch. Dist.*, 56 F.4th 767, 783 (9th Cir. 2022). "In short, courts may not inquire into whether political speech presents a 'substantial disruption' based on its *viewpoint* alone." *Defending Educ. v. Olentangy Loc. Sch. Dist.*, 158 F.4th 732, 775 (6th Cir. 2025) (en banc) (Thapar, J., concurring). Eliminating that kind of "disruption" in favor of ideological uniformity is antithetical to the First Amendment.

The rule could hardly be otherwise, as this Court has repeatedly made clear that "protected speech" does not "readily give way to a 'heckler's veto.'" *Kennedy*, 597 U.S. at 543 n.8. Restricting speech because it makes some uncomfortable "would confer broad powers of censorship" on those who claim offense. *Reno v. ACLU*, 521 U.S. 844, 880 (1997).

Worse still, it would "give[] schools a playbook for evading the First Amendment." *Mahmoud v. Taylor*, 606 U.S. 522, 591 (2025) (Thomas, J., concurring). "It undermines core First Amendment values to allow a government employer to adopt an institutional viewpoint on the issues of the day and then … portray this disagreement as evidence of disruption." *MacRae*, 145 S.Ct. at 2620 (Thomas, J.). That is especially so in the school context. "Feeling upset" is "an unavoidable part of living in our 'often disputatious' society." *L.M. v. Town of Middleborough*, 145 S.Ct. 1489, 1495 (2025) (Alito, J., dissenting from denial of certiorari). Schools thus have "a strong interest in ensuring that future generations understand the workings in practice of the well-known aphorism, 'I disapprove of what you say, but I will defend to the death your right to say it.'" *Mahanoy*, 594 U.S. at 190.

Those concerns are especially acute when the speech occurs off the job and has nothing to do with any issues specific to the workplace. *See United States v. NTEU*, 513 U.S. 454, 466 (1995). Speech that "transpires entirely on the employee's own time" brings "different factors into the *Pickering* calculus." *Connick v. Myers*, 461 U.S. 138, 153 n.13 (1983). When employees "speak or write on their own time on topics unrelated to their employment," *City of San Diego v. Roe*, 543 U.S. 77, 80 (2004), there is far less justification for treating them as anything other than a "member of the general public," *Pickering*, 391 U.S. at 573. Conversely, when public employers punish employees for off-the-job speech, there is a far greater risk that they are simply trying to "silence discourse" because they "disagree with the content of employees' speech." *Rankin*, 483 U.S. at 384.

Similar concerns have led this Court to admonish that "courts must be more skeptical of a school's efforts to regulate off-campus speech" by students, "for doing so may mean the student cannot engage in that kind of speech at all." *Mahanoy*, 594 U.S. at 189-90. So when "it comes to political … speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention," particularly when the speech involves "unpopular expression." *Id.* at 190. Those principles apply with full force when it comes to efforts to punish unpopular political expression by teachers. Simply put, the bar for muzzling public employees in their private lives is exceedingly high.

2. All of that should have made this case straightforward, as the only "disruption" the district claimed Hedgepeth's speech engendered is precisely the sort that raises First Amendment concerns, rather than justifies suppression—namely, disagreement with the views expressed. Worse still, most of the disagreement and "disruption" was generated by individuals with no direct connection to the school. The balance thus should have been struck decisively in favor of protecting Hedgepeth's core political speech. Instead, the district chose the forbidden path of enforcing orthodoxy and punishing viewpoints.

Starting with the First Amendment side of the ledger, Hedgepeth's free speech rights could hardly be stronger. As the Seventh Circuit acknowledged, there is no question that she spoke as a private citizen on matters of public concern. *See Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006). Her Facebook posts reflected commentary on race in America, including the riots

and looting that followed the death of George Floyd—one of the most salient issues of the moment. Hedgepeth engaged in that speech on her own time, on her private Facebook page, while on summer vacation in Florida. She was not Facebook friends with any current students, her Facebook page did not identify her as a teacher at Palatine, and none of her posts had any connection to anything or anyone at the school. When "the fact of employment is only tangentially and insubstantially involved in the subject matter of [a] public communication made by a teacher … it is necessary to regard the teacher as the member of the general public [she] seeks to be." *Pickering*, 391 U.S. at 574.

On the other side of the ledger, the district failed to identify any valid justification for silencing Hedgepeth's private speech. While the district insists that it had to fire Hedgepeth to prevent workplace disruption, the only "disruption" it identified is people (predominantly people with little connection to the school) voicing displeasure with what she said. Indeed, the district conceded below that her "speech did not disrupt classroom or instructional activities or after-school or extracurricular activities." App.137. And it all but admitted that "the true reason for [her] firing[] … was a disagreement with the viewpoint expressed in" her posts, *Melton v. City of Forrest City*, 147 F.4th 896, 904 (8th Cir. 2025), as the Notice of Charges highlighted "racially charged" comments that "are inconsistent with the values the District upholds." App.51. Those specific charges were not based on anything Hedgepeth said or did inside the classroom. They were based on pure speech uttered miles and months removed from the classroom. That

is naked viewpoint discrimination, not anything *Pickering* permits.

The purported evidence of "disruption" to which the district pointed only undermines its cause. This case is miles away (literally and figuratively) from a case like *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986), where on-campus speech whips a student assembly into a frenzy. *Id.* at 678. Hedgepeth's speech was off-campus and in the offseason and had nothing to do with the school. Very few of the complaining emails came from current students or parents, and the district conceded that there was no actual disruption of the learning environment. To the contrary, the only disruption identified in the complaints was the "discomfort and unpleasantness" associated with having teachers who did not share the orthodoxy of the day on matters of race and politics. *Tinker*, 393 U.S. at 509.

Take, for example, the lone email the Seventh Circuit discussed. App.11-12. The students who authored that email did not say that Hedgepeth had ever engaged in any racist or discriminatory conduct in the classroom or anywhere else. They said they "don't want a teacher at Palatine who believes we are being dramatic when a racist act has been done against us." App.12. And they expressed disagreement with what Hedgepeth said in her posts, arguing that her claim that "America is not racist" is "incorrect," that she has "inherent advantages" as a white woman, that her statements "invalidat[e] POC's negative experiences by denying her advantages in a country founded by white people, for white people," and that this "country's past and history has valued

white lives over the lives of POC's specifically black lives." D.Ct.Dkt.54-3 at 26-27. That Hedgepeth's speech prompted some students to express to the district their own views about controversial issues of the day hardly constitutes the kind of "disruption" that justifies firing a public high school teacher for her private speech over summer vacation.

Indeed, the emails that the district converted into state action only underscore the First Amendment problem here. The core theme expressed in those emails was that, as one student put it, it is "unsettling that there is a teacher who thinks like this." D.Ct.Dkt.54-3 at 231; *see also* D.Ct.Dkt.54-3 at 73-74 (parent noting that she did not want her son "exposed to [Hedgepeth's] beliefs"). If school districts could fire teachers anytime they engage in private speech that makes a few students and parents "uncomfortable," *id.*, then the principle that "[s]peech cannot be … punished or banned[] simply because it might offend" some, *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134-35 (1992), would be rendered a dead letter.

3. In concluding otherwise, the Seventh Circuit both vastly undervalued Hedgepeth's speech and vastly overvalued the district's interest in silencing it.

The problems begin with the court's insistence that Hedgepeth's core political speech was somehow entitled to less protection because she did not have any "[s]pecial[ized] knowledge" about the political issues on which she opined, and because some aspects of her posts used "vulgar language" and "jokes." App.14. The Seventh Circuit's reasons for devaluing Hedgepeth's speech were wrong. As for the former,

the First Amendment rights of public employees have never been limited to matters on which the employee has "specialized expertise or knowledge gained through her status as a public employee." App.14. Nor could it be, as any such constraint would run head-on into the rule that "academic employment[] may [not] be conditioned upon the surrender of constitutional rights which could not be abridged by direct government action." *Keyishian*, 385 U.S. at 605.

As for the latter, the Seventh Circuit ignored that a good deal of Hedgepeth's posts were factual assertions backed by statistics that the Seventh Circuit did not dispute. *See Bartnicki v. Vopper*, 532 U.S. 514, 532 (2001) ("[T]he publication of truthful information of public concern" reflects "the core purpose[] of the First Amendment."). But in any event, there is no exception to the ban on viewpoint discrimination for "vulgar" speech or jokes made on non-government time. *Iancu*, 588 U.S. at 392. Nor, again, could there be, as "humor, satire, and even personal invective can make a point about a matter of public concern." *De Ritis v. McGarrigle*, 861 F.3d 444, 455 (3d Cir. 2017). To be sure, "civil discourse is often the best antidote to a coarsening culture." *Manning v. Caldwell*, 930 F.3d 264, 306 (4th Cir. 2019) (en banc) (Wilkinson, J., dissenting specially). But civility's dictates are often "used as a censoring mechanism to drain and dilute dissenting voices," especially since "transgressions of tone tend to ring loudest when we disagree with [a] speaker's views." *Porter v. Bd. of Trs.*, 72 F.4th 573, 597 (4th Cir. 2023) (Richardson, J., dissenting). Simply put, "the tone of [Hedgepeth's] posts" does not "bear on the weight of her First

Amendment interest." *MacRae*, 145 S.Ct. at 2619 (Thomas, J.).

Making matters worse, the Seventh Circuit diminished the import of the "manner, time, and place" of Hedgepeth's speech. *Connick*, 461 U.S. at 152. The court acknowledged that Hedgepeth spoke on her own time, when school was not even in session, on topics unrelated to her employment. Yet it discounted those facts on the theory that her decision to post speech on a private social media page "carried a clear risk of amplification." App.15. Whatever that means, it is plainly incompatible with *Pickering* itself, which held that a teacher could not be fired for a letter to the editor published in the local newspaper, *see Pickering*, 391 U.S. at 566—a forum where "rapid[] circulat[ion] within the … community" is not just "predictabl[e]," App.15, but the goal. Neither *Pickering* nor any other decision from this Court has purported to confine public school teachers' First Amendment rights to *sotto voce* speech without "risk of amplification."

Finally, the Seventh Circuit strayed even farther afield by grounding "disruption" in complaints from people who did not claim to be students, parents, or employees at Palatine. "[O]utsider complaints" say very little about whether speech is likely to cause substantial disruption *in* the workplace. *Melton*, 147 F.4th at 903. And crediting them "runs the risk of constitutionalizing a heckler's veto," as "[e]nough outsider complaints could prevent government employees from speaking on any controversial subject, even on their own personal time"—and "all without a

showing of how it *actually* affected the government's ability to deliver 'public services.'" *Id.*

In sum, the speech interests here could hardly be stronger, and the district's interest in suppressing that speech could hardly be weaker. Yet the Seventh Circuit nonetheless authorized the school board to play censor. *Pickering* does not begin to justify that result—and if it did, it could not begin to be justified by the First Amendment.

II. The Decision Below Conflicts With Decisions From Other Courts Of Appeals On Multiple Grounds.

Unfortunately, the Seventh Circuit is not alone in viewing *Pickering* as a license to enforce political orthodoxy. The decision below is just the "latest in a trend of lower court decisions that have misapplied [the Court's] First Amendment precedents in cases involving controversial political speech," and "a concerning number of these cases have arisen in the context of the *Pickering-Garcetti* framework." *MacRae*, 145 S.Ct. at 2620-21 (Thomas, J.). To be sure, some of that may be a product of the limitations inherent in balancing tests. After all, trying to decide whether an employee's free speech rights are outweighed by an employer's interest in preventing workplace disruption is a bit like "judging whether a particular line is longer than a particular rock is heavy." *Bendix Autolite v. Midwesco Enters.*, 486 U.S. 888, 897 (1988) (Scalia, J., concurring in judgment). In the end, a test giving greater protection to off-campus speech—and less room for judicial balancing—may be required. But the disarray in the lower courts underscores that either greater clarity on

conducting the balancing, or less balancing, is desperately needed.

This case, for instance, looks much like *MacRae v. Mattos*, 106 F.4th 122 (1st Cir. 2024), which likewise permitted a school district to fire a teacher based on community disapproval of political speech in which she engaged outside the workplace. *Id.* at 139. But *Damiano v. Grants Pass Sch. Dist.*, 140 F.4th 1117 (9th Cir. 2025), reached the opposite result on very similar facts. There, the school district fired an assistant principal and teacher after they posted a video criticizing the school's policies on gender identity and the use of preferred names and pronouns. *Id.* at 1130. As justification, the district pointed to 75 to 150 "complaints from Plaintiffs' co-workers, parents, current and former students and members of the community," and the fact that "some NMS students protested in response." *Id.* at 1142-43. Even though there was at least *some* evidence of *actual* disruption, the Ninth Circuit reversed a grant of summary judgment to the district because the district court failed to adequately consider the "magnitude of actual and predicted disruption," *id.* at 1143, the precise number of complaints, *id.* at 1144, "whether th[e] complaints came from students, parents, District employees, or others," *id.*, and "how much weight to afford to complaints from former students and individuals who have no connection to the school," *id.* at 1146.

While divergent results like that have led some to suggest that "the proper outcome" under *Pickering* "is bound to be in the eye of the beholder," *Bennett v. Metro. Gov't*, 977 F.3d 530, 554 (6th Cir. 2020)

(Murphy, J., concurring in judgment), there is clear division in the lower courts about whether and how certain facts should matter under *Pickering*.

1. First, courts of appeals disagree about what kind of disruption counts in justifying a public employer's interest in suppressing speech. Under the decision below, public employers may punish even off-duty speech so long as enough people in the workplace and the community find it objectionable. The First Circuit took much the same approach in *MacRae*. But multiple courts of appeals have rejected the notion that public employers may engage in viewpoint discrimination just because some complain that they find the views expressed by an employee upsetting or offensive.

In *Dodge*, for example, the school district fired a middle school teacher because other teachers and staff said that they felt "intimidated, shocked, upset, angry, scared, frustrated, and didn't feel safe after learning" that the teacher wore a MAGA hat to a training session. 56 F.4th at 782. The district court granted summary judgment to the district, but the Ninth Circuit reversed because the district produced no evidence "beyond the disruption that necessarily accompanies controversial speech." *Id.* "That some may not like the political message being conveyed," the court explained, "is par for the course and cannot itself be a basis for finding disruption of a kind that outweighs the speaker's First Amendment rights." *Id.* at 783; *see also Reges v. Cauce*, 2025 WL 3685613, at *15 (9th Cir. Dec. 19, 2025) (similar).

The Third Circuit likewise has squarely held that schools may not engage in viewpoint discrimination

against their employees just because "[s]ome students and alumni disagreed with [an employee's] views." *Jorjani v. N.J. Inst. of Tech.*, 151 F.4th 135, 142-44 (3d Cir. 2025). So has the Sixth Circuit, which concluded that allowing schools "to discipline professors, students, and staff any time their speech might cause offense" would "reduce *Pickering* to a shell." *Meriwether v. Hartop*, 992 F.3d 492, 510 (6th Cir. 2021). As the court explained, "[t]he public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Id.*

2. Lower courts have also divided on whether and to what extent disapproval by "outsiders" can be used to justify viewpoint discrimination. Like the Seventh Circuit here, the First and Second Circuits have held that "the community's response" to a public employee's speech may constitute sufficient "disruption" to justify restricting First Amendment rights. *Hussey v. City of Cambridge*, 149 F.4th 57, 72 n.7 (1st Cir. 2025); *see Melzer v. Bd. of Educ.*, 336 F.3d 185, 199 (2d Cir. 2003) (similar). According to those circuits, taking "account [of] the public's perception of an employee's expressive acts" is not a "heckler's veto." *Hussey*, 149 F.4th 72 n.7.

Other courts, by contrast, have squarely rejected the notion that complaints from "the community" suffice to evince disruption to the workplace. Take the Eighth Circuit's decision in *Melton*, which reversed a grant of summary judgment to a city that fired a firefighter for posting an image on Facebook depicting a silhouette of a baby in the womb with a rope around its neck and the caption, "I can't breathe!" 147 F.4th

at 900. The city claimed that it fired the plaintiff due to a "firestorm" of complaints from police officers, city council members, and concerned citizens. *Id.* at 903. The Eighth Circuit deemed that evidence insufficient, concluding that "[g]ranting summary judgment based on such 'vague and conclusory' concerns, without more, runs the risk of constitutionalizing a heckler's veto." *Id.* "Enough outsider complaints could prevent government employees from speaking on any controversial subject, even on their own personal time." *Id.*

The Tenth Circuit has likewise rejected the notion that public employers may punish speech expressing controversial views based on the reaction of those outside the workplace. In *Flanagan v. Munger*, 890 F.2d 1557 (10th Cir. 1989), the court confronted an effort by a police department to fire police officers for opening a video rental store that offered adult films. *Id.* at 1560. The defendants claimed "that if members of the public knew that officers were renting them, negative public feelings" would "inhibit[] the efficiency and effectiveness" of the department. *Id.* at 1566. The Tenth Circuit disagreed. "The department," the court explained, "cannot justify disciplinary action against plaintiffs simply because some members of the public find plaintiffs' speech offensive and for that reason may not cooperate with law enforcement officers in the future." *Id.* "The Supreme Court has squarely rejected what it refers to as the 'heckler's veto' as justification for curtailing 'offensive' speech in order to prevent public disorder." *Id.*; *see also Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1253 (10th Cir. 2024) (similar).

The Fourth Circuit's decision in *Berger v. Battaglia*, 779 F.2d 992 (4th Cir. 1985), is much the same. That case concerned a police department that forbade a police officer from engaging in blackface performances while off duty. The department tried to justify that prohibition on the ground that the performances would offend black citizens and cause "widespread outrage" among the local community. *Id.* at 995. The court held that those concerns were not enough to outweigh the plaintiff's speech rights. The "perceived threat of disruption," it explained, "was caused not by the speech itself but by [the] threatened reaction to it by offended segments of the public." *Id.* at 1001. "[T]his sort of threatened disruption by others reacting to public employee speech simply may not be allowed to serve as justification for public employer disciplinary action directed at that speech." *Id.*[2]

3. Courts are also divided over whether the "tone" of speech matters in assessing the employee's free speech interests. *See MacRae*, 145 S.Ct. at 2619 (Thomas, J.). In the decision below, the Seventh Circuit held that "Hedgepeth's 'use of vulgar language'—i.e., jokes about excrement—weakens her speech interests." App.14. The First Circuit likewise has held that "speech commenting on public 'issues in a mocking, derogatory, and disparaging manner' is

[2] The Ninth Circuit has also "question[ed] whether complaints from individuals who have no connection to the District and live outside its service area should be given much, if any, weight in the *Pickering* analysis" given "legitimate concerns about a heckler's veto." *Damiano*, 140 F.4th at 1146; *see also Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 726 (9th Cir. 2022) (similar).

accorded less weight in the balancing test." *Hussey*, 149 F.4th at 67. The Third Circuit has suggested the same. *See Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 474 (3d Cir. 2015).

Those decisions "diverge[] from the approach in many other circuits," *Hussey*, 149 F.4th at 76 n.11 (Howard, J., dissenting), that correctly recognize that "the tone" of an employee's speech does not "bear on the weight of her First Amendment interest," *MacRae*, 145 S.Ct. at 2619 (Thomas, J.). In *Noble v. Cincinnati & Hamilton County Public Library*, 112 F.4th 373 (6th Cir. 2024), for instance, the plaintiff shared a meme on his personal Facebook page of a car running over protestors in the wake of protests after the death of George Floyd. *Id.* at 378. The meme included the caption: "All Lives Splatter, Nobody Cares About Your Protest." *Id.* His employer fired him after coworkers complained. *Id.* at 378-80. While the Sixth Circuit acknowledged that "Noble's speech was highly distasteful," it held that that did not undermine his speech interests. *Id.* at 393. The "First Amendment protects abhorrent speech, and it does so even if the speech makes others feel quite uncomfortable." *Id.*

The Ninth Circuit likewise has rejected the notion that the tone of an employee's speech can weaken his First Amendment interest. In *Reges*, the Ninth Circuit reversed a grant of summary judgment to school officials who fired a professor for including statements in his class syllabus mocking the school's recommended indigenous land acknowledgment statement. "The parodic manner of Reges's speech," the court explained, "does not detract from its First Amendment value." 2025 WL 3685613, at *13. "Nor

does the fact that some listeners may have found it disrespectful or distasteful." *Id.* "The First Amendment protects a teacher's freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms." *Id.*

The Tenth Circuit has recognized the same. In *Pryor*, 99 F.4th at 1243, the school district fired the plaintiff from his volunteer position for "passionately—and at times profanely—criticiz[ing]" district officials. *Id.* at 1248. The district argued that the plaintiff's "abusive, bullying, threatening, and intimidating conduct" diminished his speech interests. *Id.* The Tenth Circuit disagreed, concluding that the plaintiff's "interest in speaking is strong," that "[t]he impoliteness, passion, or profanity of his speech do not overcome his free speech interests," and that "the offensive, vulgar manner of Plaintiff's speech does not deprive him of constitutional protections." *Id.* at 1253.

* * *

As these cases reflect, lower courts are persistently reaching conflicting results under *Pickering* not because they are confronted with meaningfully different facts, but because they cannot agree on which types of facts matter and what weight they should be given, both in assessing whether and to what extent a public employer has demonstrated disruption, and in assessing the strength of the employee's speech interests. If *Pickering* is to provide anything close to a workable test, then it is essential that this Court "make clear that public employers cannot use *Pickering-Garcetti* balancing generally or unsupported claims of disruption in particular to

target employees who express disfavored political views." *MacRae*, 145 S.Ct. at 2621 (Thomas, J.). And if indeterminacy is inherent in *Pickering* balancing, then *Pickering* should be replaced by a test giving clearer protection to off-campus speech on matters of public concern. One way or another, a constitutional text that promises categorical protection requires greater clarity—and greater protection—than is provided by cases like the Seventh Circuit's decision here sanctioning viewpoint discrimination and handing out heckler's vetoes to individuals with little connection to the workplace.

III. This Is An Ideal Vehicle To Provide Guidance On These Exceptionally Important Constitutional Issues.

This petition provides an ideal opportunity for this Court to step in and convey that critical message. The parties engaged in thorough discovery and compiled a robust factual record, and both courts below squarely and definitively resolved the First Amendment question.[3] There is no dispute about the facts that matter most—i.e., that the speech for which Hedgepeth was fired took place far outside the workplace over summer vacation and concerned matters of core political concern. And the viewpoint

[3] While the district court held in the alternative that Hedgepeth's First Amendment claim is barred by issue preclusion, that is not an obstacle to reviewing the Seventh Circuit decision on the First Amendment issue. That holding is also wrong. Even assuming preclusion applies under Illinois law, it is forbidden under federal law, since it "is clear that … unfairness [would] result" given the demonstrated bias of the board. *Goodwin v. Bd. of Trs.*, 442 F.3d 611, 621 (7th Cir. 2006).

discrimination here is so unmistakable that to leave this decision standing would invite public employers to continue silencing controversial speech by their employees under the guise of "avoiding disruption."

That is not a tolerable result for the 22 million public employees in America. *See* U.S. Census Bureau, Annual Survey of Public Employment & Payroll Summary Report 1 (2024); Cong. Research Servs., Current Federal Civil Employment by State and Congressional District 1 (2025). The dangers are hardly speculative. In recent years, public employees across the ideological spectrum have faced punishment for political speech while off the job. *See* A. Branigin, *How Cancel Culture Came For Everyone*, Washington Post (Oct. 1, 2025). Allowing public employers to fire employees because they express controversial views risks creating a homogenized public work force. That prospect is especially troubling when it comes to public schools, as it not only would deprive students of exposure to the wide variety of views that people in our diverse society hold, but would convey to students that "the only acceptable … role models" are those who share their school district's views. *Kennedy*, 597 U.S. at 541. Indeed, the Seventh Circuit conveyed that message overtly here, positing that the district was justified in firing Hedgepeth because her views render her an inappropriate "role model" not only for students, but "for others in the PHS community" as well. App.15-16. Worse still, giving public schools free rein to fire teachers any time enough people complain about their views teaches students the exceedingly dangerous message that unpopular speech should be suppressed, not protected and countered.

The specter of being punished even for off-duty speech unrelated to their jobs also chills the speech of the millions of Americans who are publicly employed, depriving the marketplace of key voices closest to the institutions tasked with serving the public. "There is considerable value" in "encouraging, rather than inhibiting, speech by public employees." *Lane v. Franks*, 573 U.S. 228, 236 (2014). Yet uncertainty about how a court will strike the *Pickering* balance will force potential speakers to "steer far wider of the unlawful zone" than "if the boundaries of the forbidden areas were clearly marked." *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964). Those concerns are exacerbated by our increasingly online world. People can and do rethink their views as they gain different experiences and hear powerful counterarguments. Indeed, that is what the First Amendment is all about. But social media accounts and other online speech can stretch back years, beyond one's first day on the government job. Speech uttered online thus often persists *ad infinitum*, providing a ready arsenal for would-be hecklers to exploit for political leverage. This, too, runs counter to the age-old American wisdom that collegial debate can change minds and hearts. And it puts public employees to the untenable choice of keeping silent all their lives or being locked in forever to a life's worth of views, any one of which can be taken out of context, magnified, and wielded as a weapon.

In sum, the decision below teaches the wrong civics lesson. It cannot be squared with *Pickering*, with decisions from other courts applying it, or with the First Amendment. The Court should grant

certiorari and make clear that *Pickering* is not a license to balance away core First Amendment rights.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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January 8, 2026

APPENDIX

TABLE OF APPENDICES

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 24-1427

JEANNE HEDGEPETH,

Plaintiff-Appellant,

v.

JAMES A. BRITTON, et al.,

Defendants-Appellees.

Argued: Dec. 12, 2024
Decided: Aug. 26, 2025

Before: Ripple, Scudder, and Maldonado,
Circuit Judges.

OPINION

Maldonado, *Circuit Judge*. Jeanne Hedgepeth, a high school teacher with two suspensions and prior warnings of possible termination, posted inflammatory messages to a Facebook account followed mostly by former students. The posts prompted numerous complaints and media inquiries to the school district. Given the disruption and previous warnings, the school district fired Hedgepeth.

Hedgepeth sued the school district and other associated individuals under 42 U.S.C. § 1983, arguing that her discharge violated the First Amendment. The district court granted defendants summary judgment, and Hedgepeth appealed. We affirm. We hold that Hedgepeth failed to adduce sufficient evidence from which a reasonable juror could find in her favor on the merits of her First Amendment claim.

I

Until her dismissal in 2020, Hedgepeth taught social studies at Palatine High School (PHS) for twenty years. PHS is an Illinois public school located in Township High School District 211.

Prior to her termination, the District had suspended Hedgepeth twice. The first suspension came in 2016 after Hedgepeth erupted with profanity at her students after the 2016 United States Presidential Election, using the word "fucking" while in a "volatile emotional state." Citing policies demanding "just and courteous professional relationships" and student welfare, the District suspended Hedgepeth without pay for one day. Hedgepeth received an explicit written warning that future use of profanity or another similar incident would result in additional disciplinary measures, including possible termination.

Hedgepeth's second suspension occurred in 2019, after another profane outburst in the classroom, this time in response to a student. According to the incident report, she told the student, "You haven't even done your fucking homework," and directed him to "read the fucking chapter." She also replied "no shit"

to another one of the student's comments. An audio recording of the incident documented Hedgepeth's heated and profane comments. Apparently aware that her conduct violated District policy, she announced to the class that she would "surely be suspended for that." She was correct. Citing the same policies that led to her first suspension, the District suspended Hedgepeth without pay again—this time for four days. It also issued a notice to remedy, again warning of possible dismissal, and required her to attend at least six counseling sessions.

The following year, on May 31 and June 1, 2020, during nationwide protests following the police killing of George Floyd, Hedgepeth made a series of posts on Facebook. At the time, she was vacationing in Florida. The first post, evidently in response to media reports about the ongoing protests, included pictures from her vacation with the caption, "I don't want to go home tomorrow. Now that the civil war has begun I want to move." A Facebook friend commented on her post, "Follow your gut! Move!!!!!!!!" to which Hedgepeth replied, "I need a gun and training."

In another Facebook post, Hedgepeth reposted a viral meme evoking the high-pressure water hoses used against civil rights protestors in the early 1960s that read, "Wanna stop the Riots? Mobilize the septic tank trucks, put a pressure cannon on em … hose em down … the end." Hedgepeth commented on her own post, "You think this would work?"

Finally, Hedgepeth engaged in an online debate with a former PHS student about race in America. Over the course of that debate, Hedgepeth wrote in a

Facebook comment, "I find the term 'white privilege' as racist as the 'N' word."

According to Hedgepeth, former students constituted about 80% of her roughly 800 Facebook friends in June 2020. Before and after making the posts, Hedgepeth configured her Facebook account to "private" and she did not accept "friend requests" from current PHS students. Those measures, however, especially with the very high percentage of former student Facebook friends, were inadequate to keep the "private" posts from the public domain.

The day after Hedgepeth made the posts, PHS Principal Tony Medina began receiving complaints from current PHS students and alumni, another teacher, and a parent, which he relayed to District Superintendent Lisa Small. The District also received emails, calls, and media inquiries (both local and international) regarding Hedgepeth's posts. The District promptly issued a press release clarifying that Hedgepeth's posts "do not reflect the values or principles of District 211" and apologizing "for any harm or disrespect that this may have caused." By the end of the first week of June, Hedgepeth met with District Human Resources Director James Britton, who told her that the District would investigate her conduct.

A week later, Britton and Superintendent Small met with Hedgepeth and informed her they planned to recommend that the District School Board fire her. Small based the recommendation on Hedgepeth's prior disciplinary sanctions and warnings, her Facebook posts, the public reaction to them, and her "lack of any understanding or appreciation for why

many people found her comments objectionable." In addition to violating her prior disciplinary warnings, Small found that Hedgepeth had violated four other District policies, including one governing teacher conduct on social media and the same "just and courteous professional relationships" policy she had been disciplined for violating twice before.

The District Board held two public meetings, both of which included public comment. The first meeting featured at least 58 public comments on Hedgepeth's Facebook posts, most critical and a handful in support. At the second meeting, speakers also spoke mostly critically of Hedgepeth.

After holding the public meetings, the District Board voted to fire Hedgepeth. The District Board served Hedgepeth with a notice of charges, bill of particulars, and advised her of her right to request a hearing before the Illinois State Board of Education. The bill of particulars explained that the District Board no longer considered Hedgepeth qualified as a teacher because she did not conduct herself "in a manner that demonstrates good judgment," especially because she failed "to serve as [a] role model" for the community. The District Board further explained that her conduct had "damaged" Hedgepeth's effectiveness as a teacher, her broader reputation, and the reputation of PHS and the broader District community.

The bill of particulars went on, explaining that the District had by then "received over 135 emails and phone calls expressing concern or outrage about your posts. The communications came from former students, parents, current students and staff. Your

postings also received media coverage, including on WGNTV, ABC7, NBC5, Fox 32, the New York Post and the Daily Herald." The District Board viewed this as incompatible with Hedgepeth's workplace duties, which required Hedgepeth "to work with staff and students of all backgrounds and races" such that her posts "injure[d] and impede[d] the efficiency of the District's provision of services."[1] Citing as well to Hedgepeth's prior disciplinary history, the District Board concluded that Hedgepeth had "lost the trust and respect of colleagues and students."

Hedgepeth's immediate response was to request a review hearing before the Illinois State Board of Education. At the hearing, Hedgepeth was represented by counsel and had the opportunity to call witnesses, offer documents into evidence, cross-examine witnesses, and present arguments. Among other things, Hedgepeth argued that her termination was wrongful because her Facebook posts were protected under the First Amendment. The hearing officer applied the balancing test under *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968) and found that Hedgepeth's dismissal did not violate her First Amendment rights.

While awaiting decision on her administrative hearing, Hedgepeth elected to seek relief in federal court as well. She sued the District and various District Board members who voted in favor of her termination (including Superintendent Small and Director Britton), alleging that they violated her First

[1] This was no hypothetical concern. PHS has a highly diverse student body composed of 5.3% Black, 46.1% Latino, 8.1% Asian, and 37.9% white students as of 2020.

Amendment rights. After the close of discovery, the district court granted summary judgment to all defendants (together, the District), holding that Hedgepeth was collaterally estopped from bringing her First Amendment claim because she pursued appellate review before the Illinois State Board of Education and that, in any event, her claim failed on the merits.

II

We review the district court's order granting summary judgment to the District de novo, drawing all reasonable inferences in Hedgepeth's favor. *Hicks v. Ill. Dep't of Corr.*, 109 F.4th 895, 900 (7th Cir. 2024). We can affirm the district court's grant of summary judgment on any ground supported by the record. *See Hoffstead v. Ne. Reg'l Commuter R.R. Corp.*, 132 F.4th 503, 514 (7th Cir. 2025) (citation omitted). We agree that summary judgment for the District was appropriate on the merits, and we decline to rule on the preclusive effect of decisions by the Illinois State School Board.

A.

"Public employees do not relinquish their First Amendment rights as a condition of entering government service …." *Kilborn v. Amiridis*, 131 F.4th 550, 557 (7th Cir. 2025) (gathering cases). Instead, "the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006) (citations omitted). But just like "private employers, the government needs to exercise control over its employees to provide public services effectively." *Kilborn*, 131 F.4th at 557

(citations omitted). In other words, public employees "by necessity … accept certain limitations on [their] freedom," which may be particular to that employee's role and whether it is a public-facing role of "trust." *Garcetti*, 547 U.S. at 418-19.

A public employee bringing a First Amendment retaliation claim must prove three things: (1) that she engaged in constitutionally protected speech, (2) that she suffered a deprivation likely to deter such speech, and (3) that the speech was a motivating factor in her termination. *Harnishfeger v. United States*, 943 F.3d 1105, 1112-13 (7th Cir. 2019).

This case turns on the first element: whether Hedgepeth's Facebook posts are constitutionally protected speech. That issue is a question of law, though it may require courts to make certain "predicate factual determinations." *Gustafson v. Jones*, 290 F.3d 895, 906 (7th Cir. 2002).

Whether a public employee's speech is protected under the First Amendment follows a two-part framework. *See Harnishfeger*, 943 F.3d at 1113. First, we ask "whether the employee is speaking as a citizen on a matter of public concern." *Kilborn*, 131 F.4th at 557 (citing *Connick v. Myers*, 461 U.S. 138, 147 (1983)). If so, we proceed to the second step: balancing the employee's interest in commenting on matters of public concern against the government employer's interest "in promoting the efficiency of the public services." *Pickering*, 391 U.S. at 568.[2] Even speech

[2] Hedgepeth asks us to depart from or otherwise modify Supreme Court precedent because *Pickering* balancing is inconsistent with the original public meaning of the First Amendment. That is beyond our authority to decide as an

addressing matters of public concern may lose constitutional protection if the government's interest in workplace efficiency outweighs the employee's interest in speaking freely. *Kristofek v. Village of Orland Hills*, 832 F.3d 785, 795 (7th Cir. 2016).

There is no dispute that Hedgepeth spoke, through her May 31 and June 1 Facebook posts, as a citizen on a matter of public concern. Accordingly, we must apply *Pickering* balancing to weigh her First Amendment interests against the District's interest in workplace efficiency. *Harnishfeger*, 943 F.3d at 1115.

Under *Pickering*, the employer bears the burden of showing that its interest in workplace efficiency outweighs the employee's right to speak. *Craig v. Rich Twp. High Sch. Dist. 227*, 736 F.3d 1110, 1118 (7th Cir. 2013). In evaluating whether the employer has met this burden, courts consider seven factors:

> (1) [W]hether the speech would create problems in maintaining discipline or harmony among co-workers; (2) whether the employment relationship is one in which personal loyalty and confidence are necessary; (3) whether the speech impeded the employee's ability to perform her responsibilities; (4) the time, place, and manner of the speech; (5) the context in which the underlying dispute arose; (6) whether the matter was one on which debate was vital to informed decisionmaking; and (7) whether

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intermediate court of appeals. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989).

> the speaker should be regarded as a member of the general public.

Kristofek, 832 F.3d at 796 (quoting *Greer v. Amesqua*, 212 F.3d 358, 371 (7th Cir. 2000)). That being said, we have also made it clear that these seven factors are "not a doctrinal touchstone and certainly not a straitjacket" insofar as "it's not necessary to consider each one." *Darlingh v. Maddaleni*, 142 F.4th 558, 566 (7th Cir. 2025).

In the public education context, the critical focus of each factor is "the effective functioning of the public employer's enterprise." *Craig*, 736 F.3d at 1119 (quoting *Rankin v. McPherson*, 483 U.S. 378, 388 (1987)). We have held that "[i]nterference with work, personnel relationships, or the speaker's job performance can detract from the public employer's function, so avoiding such interference can be a strong state interest." *Id.* School officials can also act to nip reasonable predictions of looming disruption in the bud. *Khuans v. Sch. Dist. 110*, 123 F.3d 1010, 1014 (7th Cir. 1997). We stress that those predictions must be reasonable, meaning that they are "supported with an evidentiary foundation and [are] more than mere speculation." *Chaklos v. Stevens*, 560 F.3d 705, 715 (7th Cir. 2009) (quoting *Gazarkiewicz v. Town of Kingsford Heights*, 359 F.3d 933, 944 (7th Cir. 2004)).

The level of disruption needed to justify a restriction varies with context. *Craig*, 736 F.3d at 1119. The more serious and politically charged the message, the stronger the government's justification must be. *Id.* (citing *McGreal v. Ostov*, 368 F.3d 657, 681-82 (7th Cir. 2004)). By contrast, when the speech is "less serious, portentous, and political," a lighter

justification by the employer may suffice. *Eberhardt v. O'Malley*, 17 F.3d 1023, 1026 (7th Cir. 1994) (citation modified). Also, employers enjoy "more leeway in restricting the speech" of a public-facing employee like a classroom teacher who must maintain public trust and respect to be effective. *Craig*, 736 F.3d at 1119. Finally, the time, place, and manner of the speech factor into the overall analysis. *Id.* (citation omitted).

B.

After weighing the undisputed facts in the light most favorable to Hedgepeth, we conclude that the District's interest in addressing actual disruptions and averting future disruption outweighed Hedgepeth's speech interests.

Start with the District's evidence. The District produced a wealth of undisputed evidence of the actual disruption at PHS engendered by Hedgepeth's posts.[3] By the time the District Board voted to dismiss Hedgepeth in July, the District had received 113 emails about her posts. The record contains many examples of students and parents expressing concern about Hedgepeth's fitness as a teacher. In an email to District Board member Kimberly Cavill, students shared that,

> [a]s students of color, we feel angered by Ms. Hedgepeth's statements and feel that she should no longer have a place as staff at

[3] To dispute the disruption evidence, Hedgepeth produced a declaration from Julie Schmidt Aymler which analyzed the 113 emails and found that some were duplicative. Even crediting that declaration, the District still faced a tremendous amount of scrutiny, both from the local community and press, which is unrebutted.

> PHS. … We don't want a teacher at Palatine who believes we are being dramatic when a racist act has been done against us. We want a teacher who understands what we are going through and … the obstacles presented to us for simply being of different color.

This evidence of internal disruption is enough to distinguish *Melton v. City of Forrest City*, --- F.4th ---, 2025 WL 2329190 (8th Cir. Aug. 13, 2025). There the Eighth Circuit reversed summary judgment for a fire department because "[n]o current *firefighter* complained" about the plaintiff's social media posts. *Id.* at *7 (emphasis in original). Here, the opposite is the case.

The disruption was not limited to PHS's students—it rippled through the entire community. Hedgepeth's posts threw school and district operations into disarray and unsettled her colleagues' classrooms. The posts sparked outrage, drew media attention, and forced the District into a costly and time-consuming public relations response. Just days after her posts, other PHS teachers told the principal that summer school had been derailed by ongoing discussions about the controversy. The undisputed record further confirms that Hedgepeth's posts interfered with core District functions by diverting staff and resources to address widespread concerns from the community and the press. Given the scale of the fallout on top of Hedgepeth's prior disciplinary history, the District reasonably concluded that her conduct undermined her job performance. This is precisely the "interference with work, personnel relationships, or the speaker's job performance" that

we have routinely recognized as constituting a "strong state interest." *Craig*, 736 F.3d at 1119.

Critically, these disruptions did not occur in a vacuum. The District was entitled to look at Hedgepeth's entire employment record. That context reveals two prior, serious incidents of workplace discipline for similar violations of the District's decorum policies. The District was not required to wait around for a fourth violation. *Kristofek*, 832 F.3d at 796 ("[A] government employer is allowed to consider both the actual *and* the potential disruptiveness." (citing *Lalowski v. City of Des Plaines*, 789 F.3d 784, 791-92 (7th Cir. 2015))).

None of Hedgepeth's arguments compel a different result. She first argues that her speech concerned "debate about … George Floyd's death" and therefore was "vital to informed decisionmaking." *See Rankin*, 483 U.S. at 387. This argument misunderstands the relationship between step one and step two of the test. We agree with Hedgepeth that, in commenting about ongoing national protests, she spoke on important matters of public concern, which is why she is entitled to proceed to *Pickering* balancing at step two. But the inquiry at step two is different. The question is not whether Hedgepeth's speech implicates the First Amendment (it does), it is whether the District's interest in workplace efficiency outweighs her right to speak. *See Craig*, 736 F.3d at 1118.

True, in some cases, the step two analysis must presumptively elevate a teacher's expressive interest over the employer's interest in avoiding disruption. In *Pickering* itself, for example, "the Court observed that

'[t]eachers are … the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent'" and therefore it is "essential" that teachers "be able to speak out freely on such questions without fear of retaliatory dismissal." *Lane v. Franks*, 573 U.S. 228, 239-40 (2014) (quoting *Pickering*, 391 U.S. at 572).

This is not such a case. "Special knowledge" contemplates situations where, for example, an employee learns of misconduct and brings the issue to light or an employee testifies to the existence of corruption in the allocation of public funds. *See Garcetti*, 547 U.S. at 425 (holding that speech which "expose[s] governmental inefficiency and misconduct is a matter of considerable significance" for purposes of *Pickering* balancing). There is no dispute that Hedgepeth's speech was not informed by any specialized expertise or knowledge gained through her status as a public employee. Hedgepeth described these posts as either jokes or as sharing the views of others, not her own. Further, Hedgepeth's "use of vulgar language"—i.e., jokes about excrement—weakens her speech interests since her role of public trust counsels instead for a "calm, reasoned presentation of her views on [a] sensitive subject" in order to be effective in the classroom and respected in the PHS community. *Darlingh*, 142 F.4th at 566-67. Given that context, while her speech was certainly not devoid of constitutional value, the District's showing of substantial disruption engendered by Hedgepeth's conduct is sufficient to outweigh her interest in expression.

Hedgepeth also emphasizes that she made her posts on a private personal Facebook account that did not specifically identify her as a PHS employee. She is right that speech made outside of the workplace may be less disruptive to the "efficient functioning of the office." *See Rankin*, 483 U.S. at 388-89. That said, speech on social media is no automatic win for Hedgepeth, far from it. Her decision to post inflammatory comments to an audience that she herself curated—80% of whom were part of the PHS community—carried a clear risk of amplification. *See Liverman v. City of Petersburg*, 844 F.3d 400, 407 (4th Cir. 2016) ("A social media platform amplifies the distribution of the speaker's message—which favors the employee's free speech interests—but also increases the potential, in some cases exponentially, for departmental disruption, thereby favoring the employer's interest in efficiency."). Even with minimal privacy settings, Hedgepeth's audience choice rendered any claim to private speech illusory. Her posts, though not technically public, functioned more like a stage whisper than a secret. Thus, even drawing inferences in her favor, the posts predictably and rapidly circulated within the PHS community, including among current students and faculty, and shaped public perception of her as a teacher.

Hedgepeth next argues that her termination on the grounds of workplace disruption amounts to affording the PHS community a "heckler's veto" over the content of her speech. But, on the factual record before us, our precedent squarely forecloses that argument. Most significantly, "this argument does not account for the unique relationship" that Hedgepeth has to her audience as a public school teacher and

therefore a role model for others in the PHS community. *Craig*, 736 F.3d at 1121. We have repeatedly recognized that public school teachers occupy a unique position of trust. *See id.* (citing *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 336 F.3d 185, 199 (2d Cir. 2003) (drawing analogy to *in loco parentis*)); *see also Darlingh*, 142 F.4th at 567 ("Teachers occupy roles that entail an inordinate amount of trust and authority, which makes the government's interest particularly compelling." (citation modified)). PHS community members, including current students who predictably saw her posts, "are not 'outsiders seeking to heckle [Hedgepeth] into silence, rather they are participants in public education, without whose cooperation public education as a practical matter can-not function.'" *Craig*, 736 F.3d at 1121 (citation omitted).

Nor is it persuasive that some community members expressed support for Hedgepeth, which we construe as a variation on the heckler's veto theme. As the Second Circuit has recognized, just because "some parents and students expressed support for [Hedgepeth] as a person harmlessly expressing [her] ideas," it can still be "entirely reasonable for the Board to believe that many parents and students had a strong negative reaction to [her], and that such a reaction caused the school to suffer severe internal disruption." *Melzer*, 336 F.3d at 198.

Hedgepeth also devotes a substantial amount of her briefing to arguments that her posts were not racist or racially inflammatory. Such considerations are irrelevant to our decision. Instead, we emphasize that the District has produced unrefuted, objective

evidence of significant disruption of workplace operations.

Zooming out, the District produced ample undisputed evidence of actual disruption. That evidence shows that Hedgepeth did not lose her job because she expressed her views on a matter of public concern on Facebook. Rather, she lost her job because she posted a series of vulgar, intemperate, and racially insensitive messages to a large audience of recent PHS alumni. The District's undisputed evidence demonstrated that these posts predictably rippled throughout the community causing substantial disruption among current students and faculty and at school board meetings, even attracting local and international media attention. Emphasizing that this was Hedgepeth's third strike and not an isolated incident, the District reasonably concluded that the scope and intensity of the disruption created an insurmountable barrier to the high school's learning environment in the fast-approaching academic year. Hedgepeth has failed to rejoin this capacious showing to sufficiently carry her burden at summary judgment. We therefore conclude that Hedgepeth's posts were not entitled to First Amendment protection.

Accordingly, we AFFIRM the judgment of the district court.

Appendix B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 21-cv-3790

JEANNE HEDGEPETH,

Plaintiff,

v.

JAMES A. BRITTON, et al.,

Defendants.

Filed: Feb. 20, 2024

MEMORANDUM OPINION & ORDER

Jeanne Hedgepeth, a high school social studies teacher, wrote a series of Facebook posts in response to the George Floyd protests. After receiving emails and calls about the posts, the school district initiated an investigation, determined that Hedgepeth had violated district policies, and dismissed her. Hedgepeth requested a hearing before the Illinois State Board of Education. Based on the hearing officer's findings and recommendation for her dismissal, the school district dismissed Hedgepeth for cause. She did not seek judicial review of the dismissal in a circuit court. Hedgepeth brings this suit against Township High School District 211, its Board Members, Superintendent Lisa Small, and Human

Resources Director James Britton under 42 U.S.C § 1983 alleging that defendants violated Hedgepeth's First Amendment rights when they dismissed her. Defendants move for summary judgment on claim and issue preclusion as well as on the First Amendment claim. Plaintiff moves for summary judgment only as to the preclusion defense. For reasons discussed below, defendants' motion for summary judgment is granted and plaintiff's motion for summary judgment is denied.

I. Legal Standards

A motion for summary judgment may be granted when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute of fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party … [and] [t]he substantive law of the dispute determines which facts are material." *Runkel v. City of Springfield*, 51 F.4th 736, 741 (7th Cir. 2022) (internal citations omitted). I view all the facts and draw reasonable inferences in favor of the non-moving party to determine whether summary judgment is appropriate. *See Uebelacker v. Rock Energy Coop.*, 54 F.4th 1008, 1010 (7th Cir. 2022). These standards apply equally to cross-motions for summary judgment, *Blow v. Bijora, Inc.*, 855 F.3d 793, 797 (7th Cir. 2017), and I consider evidence from both motions to ensure that there is no material dispute. *Torry v. City of Chicago*, 932 F.3d 579, 584 (7th Cir. 2019).

II. Background

A. Hedgepeth's Disciplinary History

Hedgepeth worked for twenty years as a social studies teacher at Palatine High School until her dismissal in 2020. [67] ¶ 1; [69] ¶ 4.[1] Hedgepeth was disciplined twice before her termination.[2] Hedgepeth's first suspension in 2016 occurred after she presented a lecture about the presidential election results during

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[1] Bracketed numbers refer to entries on the district court docket. Referenced page numbers are taken from the CM/ECF header placed at the top of filings. The facts are largely taken from the parties' responses to Local Rule 56.1 statements where both the asserted fact and the opposing party's response are set forth in one document. *See* [67], [69], [78]. Any fact not properly controverted is admitted. N.D. Ill. Local R. 56.1(e)(3); *see Cracco v. Vitran Exp., Inc.*, 559 F.3d 625, 632 (7th Cir. 2009). Because I did not give plaintiff permission to file a reply brief in support of her cross-motion, she did not have the opportunity to respond to defendants' Local Rule 56.1(b)(3) statement of additional facts. [67] at 6-8. Those facts assert the content of public records, and I take judicial notice of them. *Id.* No response is necessary. I disregard all immaterial facts. *See, e.g*, [78] ¶¶ 15, 24, 29-32, 48, 53. General objections to how facts are characterized, *see* [69] ¶¶ 12-19, 49-50, 55, 57, 63, 68, 74-77 *and* [78] ¶¶ 5-6, 12-13, 52, are sustained and I omit the characterizations and cite to the original language when possible. Where the parties dispute facts and both rely on admissible evidence, I include both sides' versions, understanding that the nonmovant is entitled to favorable inferences.

[2] Hedgepeth asserts that her suspensions are only relevant to the defendants' preclusion defense. But plaintiff's history of suspensions and in particular, the Notice to Remedy issued in 2019, were relevant to her dismissal proceedings and informed the Board's decision. Both parties dispute the characterization of the prior disciplinary proceedings, *see* [78] ¶¶ 33-34, so I cite to the Conference Summaries, [54-2] at 199-208, for the purpose of explaining what the Board considered.

which she used phrases like "f-ing lie" and "fricking deported." [54-2] at 199. She was suspended without pay for one day for using inappropriate language in violation of district policies and was warned that similar incidents would result in additional disciplinary measures and possible termination. [54-2] at 200. Hedgepeth's second suspension in 2019 involved an exchange with a student where she told them, among other things, "You haven't even done your fucking homework." [54-2] at 202. The District suspended her without pay for four days, issued a Notice to Remedy, and required Hedgepeth to attend six counselor or therapy sessions. [54-2] at 204, 206-08.

B. Facebook Posts

On June 1, 2020, in the midst of the unrest following George Floyd's death, Hedgepeth took to Facebook. [67] ¶ 1; [69] ¶¶ 20-21. In response to news about incidents of rioting and looting, Hedgepeth posted photos from her vacation with the caption, "I don't want to go home tomorrow. Now that the civil war has begun I want to move." [69] ¶ 21. A Facebook friend responded to her post, "Follow your gut! Move!!!!!!!!" to which Hedgepeth replied, "I need a gun and training." [69] ¶ 21. Hedgepeth also reposted a meme that said "Wanna stop the Riots? Mobilize the septic tank trucks, put a pressure cannon on em… hose em down… the end." [69] ¶ 22. She added, "You think this would work?" [69] ¶ 22. Hedgepeth's third post was an exchange via Facebook comments with a former student where she responded in one part, "I

find the term 'white privilege' as racist as the 'N' word.'"[3] [69] ¶ 23; [78] ¶ 12.

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[3] Hedgepeth argues that the full conversation with the former student is no longer available and offers her declaration to establish what was said between them. [69-1] ¶¶ 8-10; [78] ¶¶ 12-14. Defendants object that Hedgepeth's characterization is not supported by admissible evidence. Hedgepeth's assertions about what the former student said are not offered for the truth of the matters asserted, but for their effect on Hedgepeth, who has personal knowledge of this exchange. I accept her assertion that the comment was a part of a longer conversation, but I find it immaterial because the Board only acted on what was known to them. The comment before the Board stated, "I am about facts, truth seeking and love. I will speak on any topic I choose because I live in a free country. I find the term 'white privilege' as racist as the 'N' word. You have not walked in my shoes either so do not make assumptions about me and my so called privilege. You think America is racist? Then you have been hoodwinked by the white liberal establishment and race baiters like Jesse Jackson and Al Sharpton. Travel the world and go see that every nation has racism and some more than others but few make efforts such as we do to mitigate or eliminate it. I have lived and seen[.] The people I am informed by about the black experience in America are actually some of the smartest people in America [a]nd it so happens they are black. Ii (sic) highly recommend studying Thomas Sowell who is now retired and in his 80's. A treasure. A truth seeker, does REAL research and analysis. Candace Owens is one of the smartest and most courageous women in America and Larry Elders speaks the truth with a great sense of humor and FACTS not feelings. They are who I listen to when it comes to facts about the black experience in America. Don't you think there is a deeper problem than racism when 50% of murders in America are committed by 13% of the population? Do you think there might be a subtle genocide of black babies when most planned parenthoods are put in poor neighborhood and that 33% of abortions are black babies, black women only make up 7% of the U.S. population. The greatest power you have is what you believe about yourself, what have Democrats, mainstream media and intellectuals in ivory towers been telling the black

By the next day, school principal Tony Medina began receiving messages about Hedgepeth's posts, which were relayed to Superintendent Lisa Small. [69] ¶ 24. The District also began receiving emails, calls, and media outlet inquiries.[4] [69] ¶¶ 27-28. In

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community to believe about themselves for forty years? Wake up and stop believing them, then things will change." [69] ¶ 23.

[4] Hedgepeth raises several objections to the defendants' characterization of the volume and nature of the communications received by the District. [69] ¶¶ 27-28, 48. Plaintiff objects to defendants' tally of communications received by Superintendent Small, but Small's testimony is supported by her personal knowledge of communications that were forwarded to her. [54-2] at 479-81; *see* Fed. R. Evid. 602. Her affidavit is itself evidence and does not require additional support. *See* Fed. R. Civ. P. 56(c)(4); *James v. Hale*, 959 F.3d 307, 315 (7th Cir. 2020) (A party may use an affidavit to oppose a motion for summary judgment where "the affidavit (1) attests to facts of which the affiant has personal knowledge; (2) sets out facts that would be admissible in evidence; and (3) shows that the affiant or declarant is competent to testify on the matters stated") (cleaned up). These communications are not hearsay because they are not offered for the truth of the matters asserted, other than as statements of present sense impressions; they are offered for evidence of their effect on the Board. *See* Fed. R. Evid. 803(1). For the same reasons, I overrule plaintiff's objections to Principal Medina's statements about communications he received and his personal opinion on plaintiff's fitness as a teacher. *See* [69] ¶¶ 45-47. Plaintiff offers the Alymer declaration to dispute defendants' characterization of the emails received by the District and the public comments received for the June school board meeting. [69-7] at 68-73. Ultimately, this dispute between the parties is immaterial. By plaintiff's own analysis of the communications, the District received 113 emails related to her speech and 76 comments submitted for the June board meeting. [69-7] at 68-73. I accept for purposes of summary judgment an inference in Hedgepeth's favor that some communications were supportive of her, some emails were based on template forms, and many

response, the District issued a press statement clarifying that Hedgepeth's posts "do not reflect the values or principles of District 211" and apologizing "for any harm or disrespect that this may have caused." [69] ¶ 29.

Later that week, Hedgepeth met with James Britton, the District's Human Resources Director. Britton reviewed with Hedgepeth her prior disciplinary incidents, the Notice to Remedy she received in 2019, the emails and calls coming into the District about her posts, and provided her an opportunity to explain her statements. [69] ¶¶ 30-37. Britton advised her that an investigation would follow. [69] ¶ 25. Britton prepared a memorandum for Small recounting his investigation on Hedgepeth's conduct and meetings with her; he recommended that she be considered for dismissal. [54-2] at 561-66; [69] ¶ 49.

A week later, Small and Britton met with Hedgepeth to inform her that Small would be recommending that the Board dismiss Hedgepeth. [67] ¶ 2; [69] ¶ 40. Small's recommendation was based on Hedgepeth's prior disciplinary incidents, her Facebook posts, the public reaction and feedback that

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communications were submitted by members of the public rather than students and parents. *See* [69-7] at 68-73. Even under plaintiff's analysis, however, there were communications from people critical of her, including parents and students. [69-7] at 70-71. Plaintiff also objects to the online news articles offered by defendants. [69] ¶ 29. The news articles are not hearsay because they are not being offered for the truth of the matters asserted, but to prove the effect of media attention on the Board. Newspaper articles are self-authenticating and admissible. *See* Fed. R. Evid. 902(6).

the District received, and her "lack of any understanding or appreciation for why many people found her comments objectionable." [54-2] at 481-82; [69] ¶ 53. Small concluded that Hedgepeth violated school district policies and could no longer effectively serve as a teacher and recommended her dismissal to the Board.[5]

The Board allowed public comment at two board meetings. At the June board meeting, at least 58 comments were submitted on the topic of the Facebook posts with some speakers expressing support and some expressing criticism. [69] ¶ 43; [69-7] at 71-72, 90-94. At the July board meeting, more speakers addressed the posts as well as issues of diversity and inclusion.[6] [69] ¶ 60; [69-7] at 110. During the closed

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[5] Small found that Hedgepeth's conduct violated four district policies: (1) Board Policy KA ("School-Community Relations Goals"), which requires district employees to exhibit and maintain "just and courteous professional relationships with pupils, parents, staff members and others"; (2) Board Policy GCA requiring teachers to "provide guidance to students which will promote welfare and proper educational development"; (3) Board Policy GBAD ("Social Media and Electronic Communication") requiring that "[a]ny duty-free use must not interfere with the employee's job duties or the school environment and warning that "[i]mproper use of personal technology, social media, or electronic communication for District- or school-related purposes or in a manner that is considered to have nexus to the District or school is subject to disciplinary action"; and (4) Board Policy AF of Compassion, Dignity and Respect that "values and honors the strength and diversity of all individuals." [54-2] at 178-79, 482.

[6] Hedgepeth disputes defendants' characterization of the public comments made at the July board meeting. [69] ¶ 60. The meeting minutes show that two speakers expressed support of Hedgepeth; two speakers addressed "concerning comments"; thirteen speakers addressed the topic of "equity and culture in

portion of the July board meeting, the Board took into account Small's recommendation and provided an opportunity for Hedgepeth and her attorney to respond. [69] ¶ 58. The Board then voted to dismiss Hedgepeth. [67] ¶¶ 3-4; [69] ¶ 61.

The Board served Hedgepeth with the Notice of Charges, Bill of Particulars, and advised her of her right to request a hearing. [69] ¶ 62. The Bill of Particulars stated in part: (1) "The District has received over 135 emails and phone calls expressing concern or outrage about your posts. The communications came from former students, parents, current students and staff. Your postings also received media coverage, including on WGNTV, ABC7, NBC5, Fox 32, the New York Post and the Daily Herald" and (2) "Your position requires you to work with staff and students of all backgrounds and races. Your comments reveal your biases and are inconsistent with the values the District upholds. They injure and impede the efficiency of the District's provision of services. The District's student population and staff are diverse, and such racially charged language disrupts the provision of educational services. You have lost the trust and respect of colleagues and students." [54-2] at 593-94.

C. State Board Hearing

Hedgepeth requested a dismissal hearing before a neutral hearing officer of the Illinois State Board of Education. [67] ¶ 5; [69] ¶ 62. The officer conducted the hearing on March 10 and April 9, 2021; Hedgepeth

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District 211"; and two speakers addressed suspension data. [69-7] at 110.

had the opportunity to call witnesses, offer documents into evidence, cross-examine witnesses, and present arguments. [69] ¶ 65.

On October 26, 2022, the hearing officer issued a report with findings of fact and recommendation.[7] [67] ¶ 9; [69] ¶ 67. The officer considered three issues: (1) whether Hedgepeth's Facebook posts violated the 2019 Notice to Remedy; (2) whether Hedgepeth engaged in conduct which constitutes irremediable cause for her dismissal; and (3) whether the Facebook posts were protected speech under the First Amendment. [54-2] at 620-21. Based on her findings of fact, the hearing officer determined that Hedgepeth's posts violated her Notice to Remedy issued in 2019. [54-2] at 631-33. Hedgepeth's conduct was irremediable because it "compromised, beyond repair… her ability to continue to function effectively in her role" and her posts "destroyed any possibility that she could be viewed as a fair and honest arbiter in the students' expressions of different perspectives." [54-2] at 634-35. The hearing officer applied the *Pickering* balancing test and found that Hedgepeth's

[7] Hedgepeth objects to the hearing officer's report on hearsay grounds and argues that it is only relevant as to the defendants' preclusion defenses. [69] ¶¶ 67-77. The report was a public report containing factual findings pursuant to an administrative hearing by an officer of the Illinois State Board of Education and plaintiff does not suggest that the circumstances indicate a lack of trustworthiness. *See* Fed. R. Evid. 803(8)(A)(iii)-(B). It is not excluded by the rule against hearsay. *Id.* I overrule plaintiff's objection to relevance for the same reason I overruled her objection to the conference reports—the hearing officer's findings and recommendation for dismissal were relevant to the school district's decision, and in turn, relevant to evaluating her First Amendment challenge to that decision.

First Amendment rights were not violated by her dismissal. [54-2] at 635-39; *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563 (1968). While Hedgepeth's posts touched on matters of public concern, the interest of the District in promoting the efficiency of its educational services to students outweighed her speech interests. [54-2] at 639. The Board adopted the hearing officer's findings of fact and accepted the recommendation to dismiss Hedgepeth. [67] ¶ 10; [69] ¶ 78. The Board then approved a resolution and order dismissing Hedgepeth for cause on November 10, 2022. [67] ¶ 10; [69] ¶ 78. Hedgepeth did not seek judicial review of the Board's order in a circuit court. [67] ¶ 14; [69] ¶ 80. While the hearing officer's decision was pending, Hedgepeth filed this suit for violation of her First Amendment rights under 42 U.S.C. § 1983 on July 15, 2021.[8] [1].

III. Analysis

A. Preclusion

Defendants argue that Hedgepeth's First Amendment claim is barred by both issue and claim preclusion. The law of the state of the judgment

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[8] Hedgepeth also filed a lawsuit against Tim McGowan in the Circuit Court of Cook County alleging defamation and tortious interference with a contract on February 17, 2021. [67-1] at 43, 68-69. That court granted defendant McGowan's motion for summary judgment on June 26, 2023. [67-1] at 68-69. The court determined that Hedgepeth was dismissed for cause based on her own conduct, Hedgepeth did not appeal her dismissal under Illinois Agency Law, the determination by District 211 was final, and Hedgepeth was collaterally estopped from arguing that her dismissal was wrongful or based on alleged statements of McGowan. [67-1] at 68-69.

controls the preclusion analysis, so Illinois law applies here. *See Allen v. McCurry*, 449 U.S. 90, 96 (1980). I am required to give the same preclusive effect to a state court judgment as any Illinois court rendering judgment would give it. 28 U.S.C. § 1738; *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373 (1996). But when there is no state court judgment, the federal common-law doctrine of preclusion applies. *See Univ. of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986). Unreviewed state agency findings are entitled to the same preclusive effect that a state court would afford them so long as the agency was acting in a judicial capacity and resolved issues that the parties had an adequate opportunity to litigate.[9] *Id.* at 799.

Hedgepeth argues that the Board was acting in an "executive" rather than judicial capacity, so its judgment is not entitled to preclusive effect. [56] at 8. An agency acts in a judicial capacity if the proceeding involved adequate safeguards: "(1) representation by counsel, (2) pretrial discovery, (3) the opportunity to present memoranda of law, (4) examinations and

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[9] Illinois courts grant both claim and issue preclusive effect to unreviewed state agency judgments that are "adjudicatory, judicial, or quasijudicial in nature." *Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶ 71-72. In federal courts, the preclusive effect of unreviewed agency decisions is limited to factfinding. *Allahar v. Zahora*, 59 F.3d 693, 696 (7th Cir. 1995). In this case, issue preclusion resolves the dispute, so I do not address the defendants' claim preclusion defense. [53] at 10-11; [66] at 11-14. And I do not address plaintiff's arguments that defendants acquiesced to claim-splitting, [56] at 12-13, because acquiescence is not relevant to issue preclusion. *See generally Rein v. David A. Noyes & Co.*, 665 N.E.2d 1199, 1207 (Ill. 1996) (citing to the Restatement (Second) of Judgments § 26 (1982) (discussing acquiescence in the context of claim preclusion)).

cross-examinations at the hearing, (5) the opportunity to introduce exhibits, (6) the chance to object to evidence at the hearing, and (7) final findings of fact and conclusions of law." *Reed v. AMAX Coal Co.*, 971 F.2d 1295, 1300 (7th Cir. 1992). Hedgepeth was afforded a full hearing with counsel, the opportunity to call witnesses, offer documents into evidence, cross-examine witnesses, and present arguments. [69] ¶ 65. The hearing officer issued findings of fact and recommendation for dismissal, which the Board adopted in full. [69] ¶ 78; [54-2] at 643-45. This is sufficient to establish that the Board acted in a judicial capacity.

Under Illinois law, issue preclusion, or collateral estoppel, applies if "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Gumma v. White*, 833 N.E.2d 834, 843 (Ill. 2005). A judgment is final for issue preclusion purposes when the possibility of appellate review has been exhausted. *In re A.W.*, 896 N.E.2d 316, 321 (Ill. 2008). Unlike claim preclusion, issue preclusion is limited to what was actually litigated and determined in an earlier proceeding. *See Gumma*, 833 N.E.2d at 843. There is no dispute that the third element is satisfied here.

One issue decided by the Board and the issue presented in this suit are identical—whether the Board violated Hedgepeth's First Amendment rights by dismissing her. [54-2] at 635-39. The third issue that the hearing officer explicitly addressed was,

"[w]hether Ms. Hedgepeth's Facebook posts at issue were protected speech pursuant to the First Amendment." [54-2] at 621. Based on her findings of fact, the hearing officer applied the *Pickering* test and determined that Hedgepeth's speech touched on matters of public concern, but the District's interest in promoting efficiency of providing educational services outweighed her speech interests. [54-2] at 635-40. And the determination of Hedgepeth's First Amendment defense was necessary to the Board's judgment of termination for cause, so the first element of issue preclusion is satisfied. [54-2] at 631.[10]

The Board's dismissal was a final judgment on the merits. The Illinois School Code governs the dismissal

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[10] Hedgepeth's objection that the hearing officer could not hear her § 1983 claim for monetary damages does not defeat issue preclusion, which looks at the identity of issues. *See Mir v. State Farm Mut. Auto. Ins. Co.*, No. 1:19-CV-1225, 2020 WL 1265417, at*5 (C.D. Ill. Mar. 16,2020), *aff'd*, 847 Fed. App'x 347(7th Cir. 2021*)* ("A claim is essentially a remedy for a specified wrong, whereas an issue is a matter of law or fact determined by a prior proceeding."). As for claim preclusion, the difference in available remedies does not foreclose that defense either. *See Balcerzak v. City of Milwaukee, Wis.*, 163 F.3d 993, 997(7th Cir. 1998) (rejecting litigant's argument that seeking a remedy under § 1983 in federal court defeats claim preclusion because the argument "if accepted, would undercut claim preclusion in every case where a constitutional issue was posed as a defense to a civil service commission or police board action"); *see also Abner v. Illinois Dep't of Transp.*, 674 F.3d 716, 720 (7th Cir. 2012) (applying Illinois law and finding claim preclusion barred federal suit where the proof required in the state administrative proceeding and federal § 1983 action was the same, the two suits arose from the same cause of action, and the state civil service commission could have heard the litigant's allegations of harassment and retaliation).

of tenured teachers. *See* 105 ILCS 5/24-12. A tenured teacher who is dismissed may request a full hearing before a neutral hearing officer through the Illinois State Board of Education.105 ILCS 5/24-12(d)(1). After receiving the hearing officer's report with findings of fact and recommendation,[11] the school board is required to issue a written order either retaining or dismissing the teacher for cause. 105 ILCS 5/24-12(d)(8). The order must incorporate the officer's findings of fact, but the board may modify or supplement the findings of fact if they are against the manifest weight of the evidence. 105 ILCS 5/24-12(d)(8). The decision of the school board is final unless reviewed under the Administrative Review Law, which requires any action to review a final administrative decision to be filed within 35 days of service of the decision. *See* 105 ILCS 5/24-12(d)(8)-(d)(9), 5/24-16; 735 ILCS 5/3-102-103.[12]

Hedgepeth's failure to appeal the Board's decision under the Illinois School Code means that the Board's decision constituted a final judgment on the merits. After Hedgepeth's hearing and the officer's determination, the Board approved are solution and order dismissing her for cause. [69] ¶78.This decision was final under Section 24-(d)(9) unless she filed an action for review in the circuit court within 35 days

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[11] The recommendation must address whether: "(i) the conduct at issue occurred, (ii) the conduct that did occur was remediable, and (iii) the proposed dismissal should be sustained." 105 ILCS 5/24-12(d)(8).

[12] Section 5/24-16 provides that the Administrative Review Law applies to and governs proceedings for judicial review of a school board decision to dismiss for cause.105 ILCS 5/24-16.

after she was served with the Board's decision on November 15, 2022. *See* 105 ILCS 5/24-12(d)(9), 5/24-16; 735 ILCS5/3-102-03; [69] ¶79.She did not file an action for judicial review, so the Board's judgment is entitled to preclusive effect under Illinois law. [67] ¶14; [69] ¶80; *see also Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶51 (finding that preclusion barred defendants from relitigating a termination decision in arbitration proceedings where defendants failed to seek administrative review of the police board's termination of defendant officer). Hedgepeth argues that there was no circuit court review of the Board's decision, so there is no judgment to give preclusive effect to. [56] at 9. But there is no circuit court judgment because she did not seek review, and Hedgepeth cites no authority for the proposition that a litigant can evade finality by not appealing. *See Taylor v. City of Lawrenceburg*, 909 F.3d 177, 181 (7th Cir. 2018) (applying preclusion under Indiana law and finding a board's termination decision final even though the litigant withdrew appeal from judicial review).

All the requirements of issue preclusion are met here, but Illinois courts do not apply preclusion unless "it is clear that no unfairness results to the party being estopped." *Nowak v. St. Rita High Sch.*, 757 N.E.2d 471, 478 (Ill. 2001). Hedgepeth argues that giving preclusive effect to the defendants' dismissal would be unfair and prejudicial because defendants are "inherently conflicted" and cannot be the "final arbiters" of her federal civil rights claim against them. [56] at 11. But any prejudice to Hedgepeth by giving preclusive effect to the Board's dismissal is a consequence of her own choices. She had the right

under Illinois law to file for administrative review with the circuit court if she believed the Board was biased and the judgment to be unfair. State court review provides the opportunity for a party to challenge an administrative decision for these reasons, but she opted not to do so.

Issue preclusion applies to facts resolved at the agency level, not conclusions of law. *See Allahar v. Zahora*, 59 F.3d 693, 696 (7th Cir. 1995). In some cases, giving issue-preclusive effect to an agency's findings of fact leaves little room for a contrary conclusion of law. *See, e.g.*, *Taylor*, F.3d at 181 (finding that issue preclusion barred and she cannot relitigate her First Amendment claim in this court. Issue preclusion bars Hedgepeth from relitigating these predicate facts, and they establish that Hedgepeth's posts interfered with the regular operation of the school district. a First Amendment claim where the board's findings as to causation and improper bias in a termination decision precluded subsequent litigation). The result of the *Pickering* balancing test is a legal conclusion, but it contains predicate factual determinations. *Gustafson v. Jones*, 290 F.3d 895, 906 (7th Cir. 2002). Among the predicate facts resolved before the agency here were whether there was an actual disruption and the scale of the disruption. The hearing officer found that there was a significant and largely negative response from the community, questioning Hedgepeth's ability to represent the District and function as a teacher; school administrators spent a significant amount of time, in meetings and by phone calls, addressing these concerns; the posts caused significant unrest among current students, parents, coworkers, and the

community; caused extra workload for administrators; harmed Hedgepeth's relationship to the community and to District students and parents; and threatened to harm their relationship to the District. [54-3] at 614-17, 632, 634-35, 640. With that, the outcome of the *Pickering* test necessarily follows—as discussed below, the District's interests in efficient provision of its services outweighed Hedgepeth's speech interests. Hedgpeth's speech was not protected by the First Amendment, and she cannot relitigate her First Amendment claim in this court.

B. First Amendment Claim

Even if issue preclusion did not bar Hedgepeth from relitigating her First Amendment claim, no material facts are in dispute and summary judgment in favor of defendants on the merits is appropriate. To bring a claim for retaliation under the First Amendment, Hedgepeth must establish that: (1) she engaged in constitutionally protected speech; (2) she suffered a deprivation likely to deter protected speech; and (3) her protected speech was a motivating factor in her termination. *See Harnishfeger v. United States*, 943 F.3d 1105, 1112-13 (7th Cir. 2019). Only the first element is in dispute. [78] ¶ 3.

Whether a government employee's speech is protected under the First Amendment is a question of law that may require "predicate factual determinations." *Gustafson*, 290 F.3d at 906. Hedgepeth must show that she spoke as a private citizen on a matter of public concern. *See Harnishfeger,* 943 F.3d at 1113 (citing *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) and *Connick v. Myers*, 461 U.S. 138, 147 (1983)). Defendants do not

dispute these two elements, so the burden shifts to them to show that the District's interest as an employer in "promoting the efficiency of the public services it performs" outweighs Hedgepeth's speech interests. *See* [76] at 5; *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 568 (1968). Speech on matters of public concern loses its First Amendment protection if a government employer's management interests outweigh its employee's free-speech interests. *Kristofek v. Village of Orland Hills*, 832 F.3d 785, 795 (7th Cir. 2016).

In weighing the competing interests under the *Pickering* balancing inquiry, relevant factors include:

> (1) whether the speech would create problems in maintaining discipline or harmony among co-workers; (2) whether the employment relationship is one in which personal loyalty and confidence are necessary; (3) whether the speech impeded the employee's ability to perform her responsibilities; (4) the time, place and manner of the speech; (5) the context in which the underlying dispute arose; (6) whether the matter was one on which debate was vital to informed decisionmaking; and (7) whether the speaker should be regarded as a member of the general public.

Kristofek, 832 F.3d at 796 (quoting *Greer v. Amesqua*, 212 F.3d 358, 371 (7th Cir. 2000)). If an employee's speech touches upon a matter of "strong public concern," then the government must show a higher degree of potential or actual disruption to justify the restriction. *See Craig v. Rich Twp. High Sch. Dist. 227*,

736 F.3d 1110, 1119 (7th Cir. 2013); *see also Waters v. Churchill*, 511 U.S. 661, 673 (1994) (noting that a court may give "substantial weight to government employers' reasonable predictions of disruption"). On the other hand, "the less serious, portentous, political, significant the genre of expression," the less demanding the showing that the government must make. *Eberhardt v. O'Malley*, 17 F.3d 1023, 1026 (7th Cir. 1994). The extent of an employee's authority and interactions with the public also bears on the degree of government interest in preventing disruption. *See Rankin v. McPherson*, 483 U.S. 378, 392 (1987) (holding that the government's interest in discharging a low-level employee did not outweigh her speech interests where the employee's position was limited to clerical work and did not involve law enforcement activity). Special consideration is given in the context of school-employee speech by virtue of the position of trust that a teacher in a public school occupies. *See Craig*, 736 F.3d at 1119 (noting that the employee's position as a public school counselor working closely with students involved "an inordinate amount of trust and authority"); *see also Melzer v. Bd. of Educ. of the City Sch. Dist. of the City of New York*, 336 F.3d 185, 198 (2d Cir. 2003) (recognizing that a public school teacher's "position by its very nature requires a degree of public trust not found in many other positions of public employment" so disruption caused by a teacher's speech can warrant discipline action against the teacher).

Even when viewing the undisputed facts in the light most favorable to Hedgepeth, defendants' interest in addressing the disruption caused by her Facebook posts outweighed her speech interests.

Hedgepeth's three Facebook posts, though varying in content and form, clearly touched on a matter of public concern—political unrest and race in the wake of police violence. *See Connick*, 461 U.S. at 147-48 (looking to the "content, form, and context of a given statement, as revealed by the whole record" to determine whether speech addresses a matter of public concern). While Hedgepeth's speech satisfies this threshold to reach *Pickering* balancing, it does not rise to the level of public-employee speech that warrants a stronger showing of disruption by the government. Public-employee speech may hold "special value" because the employee "gain[s] knowledge of matters of public concern through their employment." *Lane v. Franks*, 573 U.S. 228, 240 (2014). For example, a government employee who reports misconduct or exposes corruption is well-situated to bring those issues to light, and the public's interest in receiving that information is particularly strong. *See Garcetti*, 547 U.S. at 425. Although it involved politically salient issues, Hedgepeth's speech does not afford it special weight. I accept her characterization of the posts: (1) the "civil war" post where she commented "I need a gun and training" was a reference to political division and personal safety concerns; (2) the "Wanna Stop the Riots?" post was satirical rather than a literal call for violence against protesters, and (3) the exchange with the former student about the term "white privilege" was informed by Black conservative thought and supported by statistics. [68] at 13-17. None of this suggests that Hedgepeth's speech was informed by specialized knowledge gained through her public employment or that she was offering novel commentary to the fraught

political moment. Her chosen genre and medium of expression—hyperbolic or satirical social media posts and a back-and-forth discussion with a friend—are toward the less serious, less significant end of the spectrum of works of public commentary. In her own telling, she was joking and otherwise sharing the views of others. Her speech was on a matter of public concern, but it was not the type of public-employee speech that demands "particularly convincing reasons" by defendants to justify its restriction. *See Gustafson v. Jones*, 117 F.3d 1015, 1019 (7th Cir. 1997).

Both parties dispute the importance of Hedgepeth's post being shared on her personal Facebook page and whether she flouted district policy by accepting Facebook friend requests from former students. [68] at 17; [76] at 7-8. Hedgepeth was on vacation and her profile did not expressly identify her as a Palatine High School teacher. [69] ¶ 21; [78] ¶ 2. Speech made outside of the workplace may be less disruptive to the "efficient functioning of the office." *See Rankin*, 483 U.S. at 388-89. On the other hand, posting on a social media platform carries the risk of amplification. *See Liverman v. City of Petersburg*, 844 F.3d 400, 407 (4th Cir. 2016) ("A social media platform amplifies the distribution of the speaker's message—which favors the employee's free speech interests—but also increases the potential, in some cases exponentially, for departmental disruption, thereby favoring the employer's interest in efficiency."). Unlike the government employee in *Harnishfeger*, nobody leaked Hedgepeth's posts through extensive digging. *See Harnishfeger,* 943 F.3d at 1118. Hedgepeth admits that she accepted friend requests from former

students. [78] ¶ 23. The parties dispute whether it was formal district policy that teachers were instructed to unfriend former students with younger siblings still attending a school or if this was a "mere suggestion." [69] ¶ 10. Even in drawing this inference in favor of Hedgepeth, it is undisputed that her posts had their own momentum to reach a wide audience, including District 211 constituents, and reflected on the public's perception of Hedgepeth as a teacher. *See* [69] ¶ 48; [54-3] at 8-275.

Hedgepeth devotes much of her briefing to assert that her posts were not racist. Regarding the third post, she offers expert testimony to support her point that her comments were influenced by Black scholars who have made similar assertions. [68] at 15-16; [69-6] at 39-65. She argues that her comments about "Black genocide" were supported by statistics of the "Black murder rate and Black abortion rate."[13] [68] at 15. But the other side of *Pickering* balancing weighs

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[13] Hedgepeth also argues that defendants made no effort to verify the truth of her statements in the third post, so the defendants do not meet their burden under *Pickering*. [68] at 16. But defendants did not pursue Hedgepeth's dismissal based on a belief that her posts were false. [76] at 12. False speech or speech made with reckless disregard of the truth is not entitled to First Amendment protection, but that does not mean the government must establish the falsity of her statements in order to prevail under *Pickering* balancing. *See Greer v. Amesqua*, 212 F.3d 358, 373 (7th Cir. 2000) (internal citation omitted) ("Recklessly false statements by a public employee enjoy no First Amendment protection, and from this principle Greer wrongly extrapolates that speech which is factually true therefore must be absolutely protected. However, we have never held that an employer must prove the falsehood of the employee's statement before disciplining the employee based on that speech.")

the government's legitimate interest in minimizing disruption, and Hedgepeth's intent and meaning behind her posts do not diminish the impact of her speech on the District's operations. After all, a public employee must also "by necessity… accept certain limitations on his or her freedom" when entering public service. *Garcetti*, 547 U.S. at 418.

Defendants offer ample undisputed evidence of actual disruption caused by Hedgepeth's Facebook posts.[14] By the time the Board voted to dismiss Hedgepeth in July, the District had received 113 emails about her posts. [69] ¶ 48; [69-7] at 68. The record contains many examples of students and parents expressing concern about Hedgepeth's fitness as a teacher. In an email to Board Member Cavill, students shared that "[a]s students of color, we feel angered by Ms. Hedgepeth's statements and feel that she should no longer have a place as staff at PHS… We don't want a teacher at Palatine who believes we are being dramatic when a racist act has been done against us. We want a teacher who understands what we are going through and how the obstacles presented to us for simply being of different color." [54-3] at 26-

[14] Hedgepeth attempts to impose a limitation on when defendants' claim of disruption can be "measured." [68] at 21-22. She argues that disruption must be measured only up until Small's recommendation to the Board for Hedgepeth's dismissal. *Pickering* balancing prohibits consideration of "hypothetical concerns that a governmental employer never expressed." *See Harnishfeger*, 943 F.3d at 1116. Instead, I must look to what the District's concerns "really were." *Id.* But the events leading up to the Board's decision to dismiss Hedgepeth were not hypothetical and are relevant to the assessment of actual disruption that defendants were responding to.

28. One email by a parent urged a response by the District: "I don't believe Hedgepeth is the only teacher with the same beliefs. I hope that there will be anti bias training, discrimination training, diversity speakers for teachers and students." [54-3] at 73-74. Another parent email expressed concern that Hedgepeth's post about the civil war and needing a gun was "very alarming" and that she was unclear on whether the post "was meant to intimidate those with views different than her, or if it was mean [sic] to encourage others to be violent." [54-3] at 86-89. The posts also attracted media attention and prompted the District to issue a press statement. [69] ¶ 29; [54-2] at 542-48.

Defendants' actions to dismiss Hedgepeth based on public reaction to her speech did not amount to a "heckler's veto." The First Amendment generally prohibits the suppression of unpopular speech because of audience reaction; but in this context, students and parents are not a mere audience. *See Melzer*, 336 F.3d at 199. The concerns raised by students and parents regarding Hedgepeth's role as a teacher were a reasonable consideration for the District. Students and parents are not "outsiders" attempting to silence speech, but "participants in public education, without whose cooperation public education as a practical matter cannot function." *Id.* Hedgepeth notes that the community reaction included comments in support of her. *See, e.g.*, [54-3] at 13-16. But support expressed in Hedgepeth's favor does not negate the District's justification in responding to criticism and feedback. *See Melzer*, 336 F.3d at 198 ("It is true that some parents and students expressed support for Melzer as a person harmlessly expressing his ideas. It is

nonetheless entirely reasonable for the Board to believe that many parents and students had a strong negative reaction to him, and that such a reaction caused the school to suffer severe internal disruption.").

Hedgepeth also makes a variety of objections about the scale of the disruption; the fact that many comments were made by general members of the public rather than parents or teachers; and that some of the emails sent to the District were based on form templates. [68] at 22-24. Hedgepeth may dispute defendants' characterization of the comments, but she does not dispute, for example, that the district received 113 emails related to her Facebook posts or that 44 public comments submitted to the June board meeting expressed criticism of her. [69] ¶ 27; [69-7] at 68, 71-72. While the concerns of parents and teachers are particularly relevant to weighing a school district's interest in restricting teacher speech, comments raised by members of the public are not irrelevant. The government's interest in maintaining public perception is an inherent part of its operations. *See Rankin*, 438 U.S. at 390-391; *see also Locurto v. Giuliani*, 447 F.3d 159, 178 (2d Cir. 2006) (finding that the government may "legitimately regard as 'disruptive' expressive activities that instantiate or perpetuate a widespread public perception of police officers and firefighters as racist"). Nor does the fact that some of the emails sent to the District were based on recycled language suggest that the disruption was in fact minimal or overblown. The bottom line is that the District was forced to divert resources from the normal operations of school services to address Hedgepeth's posts.

Some of the defendants expressed personal opinions disapproving of her speech, so Hedgepeth argues that the District's justifications for her dismissal are pretextual. [68] at 26-28. Defendants do not dispute that Superintendent Small, for example, was "appalled" by Hedgepeth's speech. [78] ¶ 52. Board member Cavill commented that the third post invoked "racial stereotypes and racial tropes." [78] ¶ 52. Whether individual defendants viewed Hedgepeth's speech as inflammatory or racist does not diminish the evidence in the record that external complaints about her speech amounted to significant disruption.

Hedgepeth argues that defendants do not show that her speech actually interfered with her job performance. [68] at 19. A government employer is not required to show actual interference with an employee's ability to perform her job duties to prevail under *Pickering* balancing, but the assessment must be reasonable and supported by evidence rather than "mere speculation." *See Craig*, 736 F.3d at 1119. The concerns expressed by community members constituted actual disruption, but it also provided a reasonable basis for defendants to conclude that Hedgepeth's ability to perform her responsibilities as a teacher was compromised. These concerns touched on her ability to be unbiased in her role as a teacher, particularly to students of color. *See, e.g.*, [54-3] at 53 (email by family member of a current PHS student), 73 (email by parent of current student in Hedgepeth's homeroom class). Administrators also shared this concern. In recommending Hedgepeth's dismissal to Small and Britton, Principal Medina raised his concern about Hedgepeth's posts negatively reflecting

on her ability to be an effective teacher and build "a trusting relationship with students" given the "substantial minority population" at the school. [54-3] at 2-3. He also based this concern on her past conduct "involving intemperate outbursts in the presence of students." [54-3] at 2. Small's recommendation of dismissal to the Board was based on her view that the "overwhelming negative response to Hedgepeth's posts made it clear that many students would not feel that they could safely voice their opinions regarding sensitive subjects such as race in Hedgepeth's classroom." [54-2] at 482. Moreover, the District's assessment about Hedgepeth's ability to perform her duties was also reasonably informed by her prior disciplinary history, which included, among other things, unprofessional conduct violating district policy while speaking to students. [54-2] at 202-04, 206-08. In Hedgepeth's case, there was also an investigation and dismissal hearing regarding her fitness as a teacher, violation of district policies, and ability to continue in the role. *See Bennett v. Metro. Gov't of Nashville & Davidson Cnty., Tennessee*, 977 F.3d 530, 544 (6th Cir. 2020) ("There is no precedent requiring further disruption to an office environment once the government confirms violations of policy and ascertained disruption."); *see also Fenico v. City of Philadelphia*, 70 F.4th 151, 168 (3d Cir. 2023) (noting deference to "employers' reasonable interpretations of employee speech and predictions of disruption" especially where an internal investigation into the conduct has occurred). The Board's judgment about Hedgepeth's compromised ability to perform her role as a teacher was not based on mere generalizations or speculation but actual concerns reflected in the

comments and inquiries that the District received. All of these factors taken together constituted a reasonable basis for her dismissal. *See Craig*, 736 F.3d at 1120 (finding the school district "reasonably predicted" that plaintiff's book would cause apprehension among female students in seeking his help as a counselor).[15]

Undisputed facts in the record show that Hedgepeth's posts caused significant disruption to the District's operations. The posts interfered with operations by diverting resources to field the concerns raised by parents, teachers, community members, and administrators; and those concerns also reasonably informed the prediction that Hedgepeth had compromised her ability to do the job. Those management interests outweighed Hedgepeth's speech interests as a matter of law under *Pickering*. Defendants did not violate plaintiff's First Amendment rights by dismissing her.

C. Qualified Immunity

Defendants also move for summary judgment on a qualified immunity defense. [53] at 14-15. Qualified immunity protects government officials who "make reasonable but mistaken judgments about open legal questions." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Government officials are entitled to qualified

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[15] Defendants also point to Hedgepeth's speech impairing her ability to maintain close working relationships with her colleagues. [53] at 12. They do not identify facts properly supported in the record to show that Hedgepeth's speech was disruptive to the District's interest in maintaining harmony among co-workers, so I find this justification to be unsupported for purposes of summary judgment.

immunity unless their conduct violated a constitutional right that was "clearly established" at the time. *See Tousis v. Billiot*, 84 F.4th 692, 697 (7th Cir. 2023). In the context of *Pickering* balancing where "a wide gray area between the clearly legal and the clearly illegal" exists, an official is afforded the "the benefit of the doubt" if a case falls within the gray area. *Gustafson*, 117 F.3d at 1021.

Unlike the defendants in *Harnishfeger* or *Gustafson* who terminated an employee based on speech that neither caused actual disruption nor supported a reasonable belief about potential disruption, the undisputed record here shows that the Board's dismissal of Hedgepeth was based on evidence of actual disruption *See Harnishfeger*, 943 F.3d at 1121; *Gustafson*, 290 F.3d at 913. There may be grounds for debate over the amount of disruption caused by and the value of Hedgepeth's speech, but any mistake in the balancing would be reasonable. Hedgepeth has not demonstrated that the Board's *Pickering* analysis was plainly incompetent or a knowing violation of the law. *See Lopez v. Sheriff of Cook Cnty.*, 993 F.3d 981, 988 (7th Cir. 2021) (qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law") (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). The individual defendants are entitled to summary judgment based on qualified immunity.

IV. Conclusion

Plaintiff's First Amendment claim is barred by issue preclusion. In the alternative, defendants did not violate plaintiff's First Amendment rights and the individual defendants are entitled to qualified

immunity. Defendants' motion for summary judgment, [52], is granted and plaintiff's cross-motion for summary judgment, [55], is denied. Enter judgment in favor of defendants and terminate civil case.

Enter:

[handwritten: signature]

Manish S. Shah
United States District Judge

Date: February 20, 2024

Appendix C

Letter From Township High School District 211 to Jeanne Hedgepeth re: Notice of Charges, Bill of Particulars and Hearing (July 16, 2020)

Dear Ms. Hedgepeth:

You are hereby notified that the Board of Education has adopted the following charges and particulars for your dismissal as a tenured teacher in this School District.

In the opinion of the Board of Education, you are not qualified to serve as a teacher and the interests of the District require your dismissal pursuant to Section 10-22.4 of the Illinois School Code. You failed to conduct yourself in a manner that demonstrates good judgment and recognition of your role, authority, and responsibility as a teacher. You failed to serve as the role model required by Section 27-12 of the Illinois School Code. You engaged in conduct that damaged your fitness to serve as an effective teacher in the District, damaged your reputation as a teacher and a member of the school community, damaged the reputation of the District and caused harm to the staff and students of the District.

The particulars supporting this charge are as follows:

1. On June 1, 2020, the District was made aware of a Facebook post you wrote which included:

> I am about facts, truth seeking and love. I will speak on any topic I choose because I live in a free country. I find the term "white privilege" as racist as the "N" word. You have not walked in my shoes either so do not make

assumptions about me and my so called privilege. You think America is racist? Then you have been hoodwinked by the white liberal establishment and race baiters like Jess Jackson and Al Sharpton .... Don't you think there is a deeper problem than racism when 50% of murders in America are committed by 13% of the population? Do you think there might be a subtle genocide of black babies when most planned parenthoods are put in poor neighborhoods and that 30% of abortions are black babies, black women only make up 7% of the U.S. population.

2. You posted pictures of yourself apparently at a beach with the comment "I don't want to go home tomorrow. Now that the civil war has begun I want to move." You replied to a comment on your post that "I need a gun and training."

3. You posted a meme with a comment: "You think this would work?" The meme states: "Wanna stop the Riots? Mobilize the septic tank trucks, put a pressure cannon on em ... hose em down.... the end."

4. Your postings were not made as private messages but could be viewed by all of your friends on Facebook. You informed administration that you have hundreds, even thousands, of Facebook friends, most of whom are former students and most from Palatine High School. You developed your extensive network of friends on Facebook because of your relationship to them as a teacher at Palatine High School. Your

posts were shared hundreds of times through social media.

5. The District has received over 135 emails and phone calls expressing concern or outrage about your posts. The communications came from former students, parents, current students and staff. Your postings also received media coverage, including on WGNTV, ABC7, NBC5, Fox 32, the New York Post and the Daily Herald.

6. Your position requires you to work with staff and students of all backgrounds and races. Your comments reveal your biases and are inconsistent with the values the District upholds. They injure and impede the efficiency of the District's provision of services. The District's student population and staff are diverse, and such racially charged language disrupts the provision of educational services. You have lost the trust and respect of colleagues and students.

7. You previously received a one-day suspension for an incident in which you used profanity during a highly emotional exchange on November 9, 2016 in addressing the election results. Your conduct was found to violate the "just and courteous professional relationships" called for in Board Policy KA and also served to harm rather than "promote the welfare and proper educational development" in violation of Board Policy GCA. At the time, you were informed that you were "subject to further disciplinary consequences, up to and including possible suspension or termination, for any subsequent incidents of

> unprofessional conduct as a teacher for District 211."
>
> 8. You received a Notice to Remedy on March 14, 2019. You received the Notice due to an incident in your class when you yelled and derided a student during a profanity-laden argument in which you berated the student's attitude and behavior toward you. At the time you were directed as follows: You may not use profane, vulgar, offensive or threatening language in the presence of students or while performing work for the District; you may not use an angry, agitated or threatening tone in the presence of students or while performing work for the District; you must treat students in a professional and respectful manner; you are directed to become familiar with and abide by Board policies.
>
> 9. The Board policy on Social Media and Electronic Communication states: "Improper use of personal technology, social media or electronic communication for District- or school-related purposes or in a manner that is considered to have nexus to the District or school is subject to disciplinary action in accordance with existing board policies."

On now three occasions, you have used words inappropriate for your role as a teacher and have hampered your capacity to serve as a member of the school community. You have harmed students, demonstrated unprofessional conduct, and shown that you failed to develop an appreciation that your words and treatment of others have impact. You can no longer serve as a role model because your actions and

words conflict with the most basic tenet, that the District should not harm students. You failed to treat students with dignity in the classroom and chose to broadcast in a public space words that devalue and demean while knowing that this space is populated by those who recognize you as an educator.

Section 24-12 of the School Code permits you to request a hearing before a hearing officer selected through the offices of the Illinois State Board of Education. You have the right to request a hearing before a mutually selected hearing officer, with the cost of the hearing officer split equally between you and the Board, or before a Board-selected hearing officer, with the cost of the hearing officer paid by the Board of Education.

Your request for this hearing must be made within seventeen days of your receipt of this notice. If such a request is made, it must be submitted in writing to Dr. Lisa Small. Your request for a hearing must be personally delivered to Dr. Small's office, or, if mailed, show a postmark within the seventeen day request period. If you request a hearing in a timely manner, your request will be forwarded to the Illinois State Board of Education.

Your dismissal will become effective as provided in the enclosed certified copy of a "Resolution Regarding the Suspension and Dismissal of a Tenured Employee (Jeanne Hedgepeth)" providing for your dismissal.

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 211

COOK COUNTY, ILLINOIS

By: [handwritten: signature]
President

Attest:

[handwritten: signature]
Secretary

Dated: [handwritten: 7/20/2020]

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COOK COUNTY, ILLINOIS

Resolution Regarding the Suspension and Dismissal of a Tenured Employee (Jeanne Hedgepeth)

WHEREAS, the Board of Education has received information and recommendations from members of the administration regarding the conduct of Jeanne Hedgepeth, a tenured teacher in this School District, and conducted a hearing at which Ms. Hedgepeth was offered the opportunity to respond to the administration's reports and recommendations; and

WHEREAS, the Board finds that Ms. Hedgepeth's conduct constitutes cause and grounds for her dismissal; and

WHEREAS, it is the opinion of the Board that the best interests of the School District require Ms. Hedgepeth's dismissal and her suspension, without pay, as provided below:

NOW, THEREFORE, Be It Resolved by the Board of Education of Township High School District 211, Cook County, Illinois as follows:

Section 1: The Board has considered and hereby adopts the matters set forth in the preambles to this Resolution and in the Notice of Charges, Bill of Particulars and Hearing, attached as Exhibit A and made a part hereof, as the basis for the dismissal of Ms. Hedgepeth as a tenured teacher in this School District.

Section 2: Ms. Hedgepeth is hereby suspended without pay pending conclusion of the hearing and

final disposition of the dismissal proceedings initiated by this Resolution. Ms. Hedgepeth's dismissal shall become effective: 1) when this Board's decision to dismiss is affirmed as provided by law; or 2) if Ms. Hedgepeth does not request a hearing within the time provided by law, immediately upon the expiration of the time to request a hearing; or 3) if a hearing request is made and later withdrawn, immediately upon the State Board of Education's confirmation of the termination of the hearing.

Section 3: The President and Secretary of this Board are authorized and directed to prepare and serve, or cause to be prepared and served, on Ms. Hedgepeth and on the Illinois State Board of Education, a written Notice of Charges, Bill of Particulars and Hearing, substantially in the form of Exhibit A.

Section 4: In the event Ms. Hedgepeth timely requests a hearing, the President and Secretary of this Board are hereby authorized and directed to prepare and serve, or cause to be prepared and served, a Notice of Hearing on the Illinois State Board of Education, substantially in the form of Exhibit B, attached hereto and made a part hereof, accompanied by a Secretary's Certificate certifying a true and correct copy of this Resolution and also certifying this Board's motion and vote on the dismissal of Ms. Hedgepeth.

Section 5: The President and Secretary of this Board are authorized and directed to prepare and serve, or cause to be prepared and served, such notices and documentation as may be necessary to effectuate the dismissal of Ms. Hedgepeth as a tenured teacher in this School District. Any notice required or

authorized to be given pursuant to this Resolution or by law may be served personally, by overnight mail or by registered or certified mail, return receipt requested. In the event Ms. Hedgepeth does not accept service of, or claim from the United States Postal Service, any document sent by overnight mail or registered or certified mail to her last known residence, the document shall be deemed to have been received as follows:

(1) In the case of overnight mail, without requirement of personal receipt, on the date of delivery of her residence.

(2) In the case of overnight mail to be receipted only by Ms. Hedgepeth or registered or certified mail, return receipt requested, on the date the Postal Service returns the document to the sender because it could not be delivered and was not claimed in accordance with the customary procedures of the Postal Service.

Section 6: Franczek P.C., 300 South Wacker Drive, Suite 3400, Chicago, Illinois 60606, is hereby appointed agent and attorneys for this school District in connection with the dismissal of Ms. Hedgepeth and is authorized to proceed with the selection of the hearing officer provided by law.

Section 7: This Resolution shall be in full force and effect upon its adoption.

ADOPTED this 16th day of July, 2020, by the following roll call vote upon the motion of Board member Rosenblum, seconded by Board member Klimkowicz.

YES: Anna Klimkowicz, Kimberly Cavill, Steven Rosenblum, Edward Yung, Robert LeFevre

NO: Peter Dombrowski, Mark Cramer

ABSENT: None

[handwritten: signature]
President, Board of Education

Appendix D

Plaintiff's Response to Defendants' Statement of Facts and Plaintiff's Statement of Additional Facts (July 17, 2023)

Plaintiff Jeanne Hedgepeth, by counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the U.S. District Court for the Northern District of Illinois, respectfully submits this response to Defendants' statement of undisputed material facts and Plaintiff's own statement of additional facts:[1]

I. The Parties, Jurisdiction and Venue

1. The District is the largest public high school district in the state, serving approximately 12,000 students in five high schools, including Palatine High School ("PHS"). The District employes approximately 900 licensed educators to serve its student population. (Ex. 3, Britton Decl., ¶ 2).

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first sentence. Plaintiff disputes the second sentence. Defs' Ex. 2, pgs. 148-22-149:1 (Small testifying that the district has "just under 1,000" licensed teachers.).

2. The District is racially diverse. According to data published by the Illinois State Board of Education, in 2020 the District's student body

[1] Defendants' appendix of exhibits includes as Exhibit 35 what appears to be a collection of social media posts from a variety of sources. Defendants do not appear to cite or otherwise rely on Exhibit 35, and Plaintiff objects to its inclusion in Defendants' exhibits on this basis. Plaintiff also objects to Exhibit 35 because it is inadmissible hearsay.

included 5.7 Black, 26% Hispanic, 21.1% Asian, .2% Native American, and 43.7% White students. At PHS in 2020, the student body included 5.3% Black, 46.1 % Hispanic, 8.1% Asian, and 37.9% White students. Moreover, about 56% of the student population are from lower socioeconomic backgrounds. Ex. 2, 101:9-16, 134:8-16; Ex. 3, Britton Decl., ¶ 3; Ex. 4.

PLAINTIFF'S RESPONSE:

Plaintiff disputes that the first sentence is a statement of fact but instead is a statement of opinion. Plaintiff does not dispute that the Illinois state Board of Education published the statistics cited. Plaintiff notes that, according to the U.S. Census Bureau, Hispanic is an ethnicity, not a race, and persons who identify as Hispanic also may identify themselves as belonging to one or more of the five races on which the U.S. Census Bureau collects data. *See, e.g.*, U.S. Census Bureau, "About the Topic of Race, (available at https://www.census.gov/topics/population/race/about.html.). In this regard, the second sentence is imprecise if it is intended to relate to the first sentence. Plaintiff disputes the final sentence. Defs' Ex. 2, pg. 20:6-7 (about "30 percent" of students come from "families with lower socioeconomic backgrounds.").

3. Lisa Small is the District Superintendent, James Britton is the Director of Human Resources, and Tony Medina is the Principal of PHS. Kimberly Cavill, Anna Klimkowicz, Robert J. LeFevre, Jr., Steven Rosenblum, and Edward M. Yung were members of the District's Board of Education in June and July 2020. LeFevre and Yung are no longer members of the Board. Ex. 3, Britton Decl., ¶¶ 1, 4.

PLAINTIFF'S RESPONSE:

Undisputed.

4. Plaintiff Jeanne Hedgepeth is a resident of Cook County, Illinois. Hedgepeth was formerly employed by the District as a Social Studies teacher at PHS. Complaint, Dkt. No. 1, ¶¶ 3, 12; Ex. 3, ¶ 5.

PLAINTIFF'S RESPONSE:

Undisputed.

5. Plaintiff asserts a federal claim under 42 U.S.C. § 1983 and the First Amendment of the U.S. Constitution. Complaint, Dkt. No. 1.

PLAINTIFF'S RESPONSE:

Undisputed.

II. District Policies

6. The District's Value Statements are set forth in Board Policy AF. Among the values expressed are "Compassion, Dignity and Respect," meaning that the District "values and honors the strength and diversity of all individuals." Those values apply to students, staff and whoever is part of the District 211 community. Ex. 2, 133:19-134:2; Ex. 3, Britton Decl., ¶ 6; Ex. 5.

PLAINTIFF'S RESPONSE:

Undisputed.

7. Board Policy KA, "School-Community Relations Goals," requires employees of District 211 to exhibit and maintain "just and courteous professional relationships with pupils, parents, staff members and others." Ex. 3, Britton Decl., ¶ 6; Ex. 6.

PLAINTIFF'S RESPONSE:

Undisputed.

8. Board Policy GCA provides that teachers must "provide guidance to students which will promote welfare and proper educational development." Ex. 3, Britton Decl., ¶ 6; Ex. 7.

PLAINTIFF'S RESPONSE:

Undisputed.

9. Board Policy GBAD - Social Media and Electronic Communication requires that "[e]mployees using any form of social media or electronic communication must abide by all district policies and legal requirements" and that "[a]ny duty-free use must not interfere with the employee's job duties or the school environment." Board Policy GBAD warns employees that "[i]mproper use of personal technology, social media or electronic communication ... considered to have nexus to the District or school is subject to disciplinary action in accordance with existing board policies." Ex. 3, Britton Decl., ¶ 6; Ex. 8.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first sentence. Plaintiff disputes that the second sentence is a full, complete, or accurate recitation of the policy. Defs' Ex. 8 ("Improper use of personal technology, social media or electronic communication for District- or school-related purposes or in a manner that is considered to have a nexus to the District or School is subject to disciplinary action in accordance with existing board policies."). Plaintiff respectfully refers the Court to the policy for a complete and accurate

statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 8.

10. The expectations set by Board Policy GBAD were further explained in a Teacher Institute Day presentation during the 2019-2020 school year, which Hedgepeth attended. Teachers were instructed to "'unfriend' former students who have younger siblings attending a District 211 school." Teachers were also instructed to review privacy settings often to maintain privacy as well as remain diligent in separating personal and professional media interactions. Hedgepeth attended this training. Ex. 2, 243:24-244:9; Ex. 3, ¶ 11; Ex. 9, p. 9.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute attending the 2019-2020 Teacher Institute Day or that the slide (Ex. 9, pg. 9) contains the quoted language. Plaintiff disputes that the evidence presented establishes that the slide explains or otherwise elaborates on or reflects Board Policy GBAD. Plaintiff also disputes that the evidence presented establishes that the slide was a mandatory instruction as opposed to a mere suggestion. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 4.

11. Beginning in the 2016-2017 school year, the District implemented concerted initiatives to address inequity in academic results between students from different racial groups. One of the key components that the District identified as being important to address inequity in academic achievement was ensuring that students have the support they need to excel in the educational opportunities provided in the schools. This includes ensuring that students have a base sense of trust and security that they feel from the

adults around them in the school. Ex. 2, 134:17-136:18; Ex. 17, ¶ 2.

PLAINTIFF'S RESPONSE:

Undisputed, although Plaintiff objects that the assertions in paragraph 11 are irrelevant and immaterial.

III. Plaintiff's Employment and Prior Discipline

A. November 9, 2016 Incident and Hedgepeth's First Suspension

12. On November 9, 2016, the morning after the 2016 presidential election, Hedgepeth delivered what she characterized as a "passionate mini-lecture" regarding the election to her second period class. A student recorded the "mini-lecture" and posted the recording on FaceBook. During the recorded "mini-lecture," Hedgepeth became emotional, using the word "fucking" twice before abbreviating the curse word. Hedgepeth told students who were concerned about Trump's election that certain representations about the election were a "f-ing lie" and that no one was going to be "fricking deported." Ex. 1, 56:9-24; Ex. 2, 24:14-25:11; Ex. 3, ¶ 7; Ex. 10.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about November 9, 2016. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the November 29, 2016 "Conference Summary" regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 11; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 32. Plaintiff also objects

to the assertion in paragraph 12 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

13. The District investigated Hedgepeth's conduct. It determined that Hedgepeth had violated Board Policy GCA by failing to maintain "just and courteous professional relationships with pupils." The District also determined Hedgepeth's "volatile emotional state and profane words served to harm rather than 'promote student's welfare and proper educational development," in violation of Board Policy GCA. Ex. 3, ¶ 8; Ex. 11.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about November 9, 2016. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the November 29, 2016 "Conference Summary" regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 11; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 32. Plaintiff also objects

to the assertion in paragraph 13 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

14. Hedgepeth received a one-day unpaid suspension as a result of her actions. She was also warned that, should any similar incident occur again, additional disciplinary measures would be taken, up to and including termination. Ex. 1, 56:9-20, 59:1-14; Ex. 3, ¶¶ 8-9; Ex. 11.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about November 9, 2016. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the November 29, 2016 "Conference Summary" regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 11; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 32. Plaintiff also objects to the assertion in paragraph 14 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or

motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

B. February 13, 2019 Incident and Hedgepeth's Second Suspension

15. On February 13, 2019, Hedgepeth had another outburst during her second-period class. Then-principal Gary Steiger documented his investigation of and discussion with Hedgepeth about the incident in a February 22, 2019 "Conference Summary" memo. Hedgepeth could have submitted a rebuttal to the February 22, 2019 memo, but did not do so. Her only issue with the memo was that the district used a recording made by a student against her, but she did not dispute that her behavior in class was inappropriate, testifying "I own that 100 percent." Ex. 1, 74:5-77:9, 83:10-85:1; Ex. 3, ¶ 10; Ex. 12.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about February 13, 2019. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the March 14, 2019 Notice to Remedy and Memorandum regarding the incident and discipline and denies any

allegations inconsistent therewith. *See* Defs' Ex. 13; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 33. Plaintiff also objects to the assertion in paragraph 15 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

16. According to Steiger's memo, during this incident, a student ("Student A") questioned Hedgepeth's teaching style and ability. She then passed out a homework packet and began checking homework. Student A had not completed his homework. Hedgepeth confronted Student A, stating "you haven't even done your fucking homework." Student A then left the classroom. After Student A left, Hedgepeth apologized to the class and remarked that she would "surely be suspended for that." Afterward, several students went to the office to report the incident. One student provided a recording that she had made of the incident. Ex. 1, 74:5-77:9; Ex. 3, ¶ 10; Ex. 12.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class

on or about February 13, 2019. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the March 14, 2019 Notice to Remedy and Memorandum regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 13; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 30. Plaintiff also objects to the assertion in paragraph 16 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

17. In a meeting with Steiger on February 19, 2019, Hedgepeth acknowledged that she was angry and agitated with Student A, and that Student A set her off when she discovered that he had not completed his assignment. Hedgepeth denied using profanity more than once in the ex- change with Student A. Principal Steiger then played the recording of the incident for Hedgepeth. On the recording, Hedgepeth could be heard having a heated discussion with Student A in which she used the phrases "read the fucking chapter" and "no shit." Ex. 1, 80:10-81:6; Ex. 3, ¶ 10; Ex. 12.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about February 13, 2019. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the March 14, 2019 Notice to Remedy and Memorandum regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 13; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 33. Plaintiff also objects to the assertion in paragraph 17 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

18. After an investigation, the District again found that Hedgepeth had violated Board Policies GCA and KA, in that her words and actions failed to exhibit a just and courteous professional relationship with her pupils, and she failed to promote the welfare and proper educational development of students by berating a student and displaying such strong language to a class filled with students. Ex. 3, ¶ 10; Ex. 12.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about February 13, 2019. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the March 14, 2019 Notice to Remedy and Memorandum regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 13; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 33. Plaintiff also objects to the assertion in paragraph 18 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See* Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

19. As a result of the February 13, 2019 incident, the District suspended Hedgepeth without pay for four days and issued her a Notice to Remedy dated March 14, 2019. Hedgepeth was also required to attend a minimum of six counseling sessions through the Employee Assistance Program. The Notice of Remedy listed four directives that Hedgepeth was ordered to comply with immediately and for the remainder of her

career at District 211. Specifically, Hedgepeth was directed that she:

- May not use profane, vulgar, offensive or threatening language in the presence of students or while performing work for the District.
- May not use an angry, agitated, or threatening tone in the presence of students or while performing work for the District.
- Must treat students in a professional and respectful manner.
- Become familiar with and abide by board policies.

Hedgepeth was warned that her failure to comply with the above directives would "likely result in [her] dismissal as a tenured teacher." Ex. 1, 82:4-83:9, 85:2-86:1; Ex. 3, ¶ 10; Ex. 13.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she was disciplined for an incident that occurred in her second period class on or about February 13, 2019. Plaintiff disputes Defendants' characterization of the incident and the discipline. Plaintiff respectfully refers the Court to the March 14, 2019 Notice to Remedy and Memorandum regarding the incident and discipline and denies any allegations inconsistent therewith. *See* Defs' Ex. 13; *see also* Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 33. Plaintiff also objects to the assertion in paragraph 19 as irrelevant and immaterial as Defendants have admitted that Plaintiff's Facebook posts were a "substantial or motivating factor in Defendants' decision to terminate Plaintiff's employment." *See*

Plf's Ex. 2 (Defs' Answer (ECF No. 20)), at pg. 11, ¶ 33; Plf's Ex. 3 (Defs' Amended Answer (ECF No. 45)) at pg. 11, ¶ 33. Additionally, Defendant District 211 admitted that "[p]rior to the Facebook posts at issue in this case, District 211 anticipated that Plaintiff would be employed as a full-time tenured teacher at Palatine High School for the 2020-2021 school year." Plf's Ex. 20 (Def's Answers to Plf's First Set of Interrogatories) at Response to Interrog. No. 1.

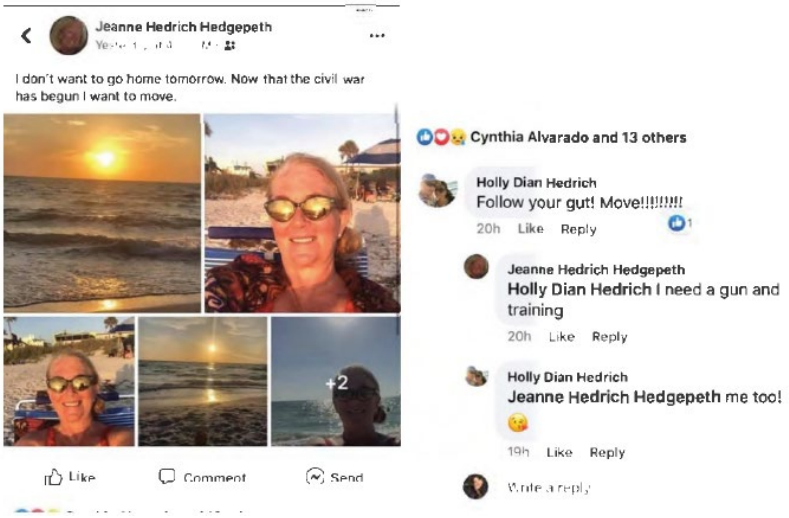
IV. Plaintiff's Facebook Posts and the District's Investigation

20. On May 25, 2020, Minneapolis policeman Derek Chauvin knelt on George Floyd's neck, back, and arm for almost ten minutes, causing Floyd's death. After video of the incident circulated on the Internet, protests of police violence against people of color expanded across the country. Some of these protests became violent, including rioting and looting. Ex. 14.

PLAINTIFF'S RESPONSE:

Undisputed.

21. On May 31 and June 1, 2020, Hedgepeth was vacationing in Florida. Hedgepeth shared her reactions to the protests over Floyd's murder by means of her Facebook account. Hedgepeth posted several vacation photos to Facebook along with the statement, "I don't want to go home tomorrow. Now that the civil war has begun I want to move." One of Hedgepeth's Facebook Friends responded "Follow your gut! Move!!!!!!!!" Hedgepeth replied to that comment, "I need a gun and training," to which her friend replied "Me too!"



Ex. 1, 23:11-24:19, 25:16-26:11; Ex. 15.

PLAINTIFF'S RESPONSE:

Undisputed.

22. Also, on May 31 or June 1, 2020, Hedgepeth reposted a meme that stated, "[w]anna stop the riots? Mobilize the septic tank trucks, put a pressure cannon on em.... hose em down... the end." In her post, Hedgepeth asked "You think this would work?"

Ex. 1, 27:6-23; Ex. 15.

PLAINTIFF'S RESPONSE:

Undisputed.

23. In response to a post by a former student who had used the term "white privilege," Hedgepeth posted a comment in which she stated:

> I am about facts, true-seeking and love. I will speak on any topic I choose because I live in a free country. I find the term "white privilege" as racist as the "N" word. You have not walked in my shoes either so do not make assumptions about me and my so called

privilege. You think America is racist? Then you have been hoodwinked by the white liberal establishment and race baiters like Jesse Jackson and Al Sharpton. Travel the world and go see that every nation has racism and some more than others but few make efforts such as we do to mitigate or eliminate it. I have lived and seen. The people I am informed by about the black experience in America are actually some of the smartest people in America. And it so happens they are black. I highly recommend studying Thomas Sowell who is now retired and in his 80's. A treasure. A truth seeker, does REAL research and analysis. Candace Owens is one of the smartest most courageous women in America and Larry Elders speaks the truth with a great sense of humor and FACTS not feelings. They are who I listen to when it comes to facts about the black experience in America. Don't you think there is a deeper problem than racism when 50% of murders in America are committed by 13% of the population? Do you think there might be a subtle genocide of black babies when most planned parenthoods are put in poor neighborhoods and that 30% of abortions are black babies, black women only make up 7% of the U.S. population. The greatest power you have is what you believe about yourself, what have Democrats, mainstream media and intellectuals in ivory towers been telling the black community to believe about themselves for forty years?

> Wake up and stop believing them, then things will change.

Ex. 1, 28:6-27:7; Ex. 15

PLAINTIFF'S RESPONSE:

Plaintiff disputes that paragraph 24 is the entire exchange between Plaintiff and the former student. Plf's Add'l Facts, ¶¶ 10-13

24. On June 1, 2020, PHS Principal Tony Medina began receiving messages from individuals raising concerns and complaints about Hedgepeth's Facebook posts. The same day, Small learned of the posts after a former PHS student contacted the Board of Education President, who connected the student with Small. Medina also advised Small of the messages that he was receiving regarding Hedgepeth's posts. Small directed Britton to begin an investigation into the posts. Ex. 2, 138; Ex. 16, Small Dep. 20:9-21:19; Ex. 32, Medina Decl., ¶ 2.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first three sentences. Plaintiff disputes that the evidence cited by Defendants supports the fourth sentence.

25. On the evening of June 1, 2020, Britton met with Hedgepeth and the Vice President of the teachers' union via Zoom. Britton told Hedgepeth that, while the District investigated the matter, she should stay off of social media. Hedgepeth stated that she was aware of the concerns and had already removed herself from Facebook. Britton told Hedgepeth that he would follow up with her after gathering further information. Ex. 2, 52:2-23, 288:15-21; Ex. 3, ¶ 13.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first, third, or fourth sentence. With respect to the second sentence, Plaintiff disputes that Britton instructed or ordered her to stay off social media but instead only suggested that Plaintiff stay off social media while the investigation was pending. Defs' Ex. 2, pg. 288:17-21; Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 43.

26. Britton reviewed Hedgepeth's Facebook posts, which were included as screenshots in multiple messages sent to District representatives. Through that review, he identified former PHS student Kearra Harris as the individual to whom Hedgepeth made the post in which she stated that she found the term "white privilege as racist as the 'N' word." Harris told Britton that she was appalled at Hedgepeth's comments, and particularly upset about Hedgepeth's reference to the abortion of black babies. Harris stated that another former PHS student who was also friends with Hedgepeth captured Hedgepeth's comment and posted it, where it was viewed and captured by others on Facebook. Ex. 2, 40:10-43:17; Ex. 3, ¶¶ 14-15; Ex. 26, p. 1.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first or second sentences. Plaintiff objects to the third and fourth sentences on admissibility grounds, as Defendant Britton's recitation of statements purportedly made to him by Harris contains multiple levels of hearsay.

27. In the first few hours after Small first learned of the posts, the District had received complaints from ten individuals, including three current students, one teacher, one parent, and four alumni. By June 3, 2020,

the District had received 50 emails and calls regarding Hedgepeth's posts. Overwhelmingly, the communications that the District received stated that individuals were mad, irritated, and appalled that this was a Palatine High School teacher making these comments on social media, and asked for a resolution that typically involved Hedgepeth no longer being in the classroom. While there were also some messages that were supportive of Hedgepeth, those were significantly less than the ones that were not supportive, and most of them stemmed from earlier positive relationships with Hedgepeth rather than commenting directly on her posts. Ex. 2, 65:14-66:5; 137:14-143:14; Ex. 17, ¶ 4; Ex. 18.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the District received emails and calls about her posts beginning on or about June 1. Plaintiff disputes that the evidence cited by Defendants supports the assertion that the District received 10 complaints "in the first few hours," as it shows only nine communications. Def's Ex. 18. Plaintiff also objects that the testimony and purported notes of Defendant Small (Ex. 2, pgs. 137-14-143:14, Ex. 17, and Ex. 18) is inadmissible because it contains multiple levels of hearsay.

28. The District also received media inquiries regarding Hedgepeth's posts from news outlets across the country and even internationally. These included WGNTV, ABC7, NBC5, Fox 32, the New York Post, the Daily Herald, and even the U.K.-based Daily Mail. The District received requests for comment from several news organizations. Ex. 2, 143:15-20; Ex. 4, Small Decl., ¶ 5; Ex. 21; Ex. 22.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the media outlets referenced in paragraph 28 published reports. Plaintiff disputes that the evidence cited by Defendants establishes that each of these outlets made inquiries of the District. In particular, it only shows inquiries from NBC5 and Fox 32.

29. Because of the community response and media attention regarding Hedgepeth's posts, the District issued a press statement, which read:

> The administration was made aware of a social media post made by a staff member. The posting has been removed, and we are currently conducting an investigation and will follow through with appropriate measures. The statements in the post do not reflect the values or principles of District 211. We are truly sorry for any harm or disrespect that this may have caused.

Ex. 2, 143:15-20; Ex. 17, ¶ 6; Ex. 22 (News articles).

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the District issued a press statement or that the statement is accurately quoted. Plaintiff object to the admissibility of the news articles comprising Exhibit 22 on hearsay grounds.

30. On June 3, 2020, Britton met in person with Hedgepeth, the President and Vice President of the teacher's union, and Assistant for Human Resources Kathe Lingl. During the meeting, Britton reviewed with Hedgepeth the discipline that she received in connection with the November 9, 2016 and February

13, 2019 incidents, including the March 14, 2019 Notice to Remedy. Ex. 3, ¶ 16; Ex. 26, pp. 2-4.

PLAINTIFF'S RESPONSE:

Undisputed.

31. During the June 3, 2020 meeting, Britton went on to explain that the District had by that time received over fifty emails and phone calls with concerns about Hedgepeth's social media posts and teaching, and that complaints had been sent to the current and former superintendents, members of the Board of Education, and building and district administrators. Ex. 3, ¶ 16; Ex. 26, p. 3.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that Britton made the statements referenced in paragraph 31 at the June 3, 2020 meeting. Plaintiff objects to the materiality or relevance of whether Britton made the statements referenced paragraph 31 at the June 3, 2020 meeting. Plaintiff objects to the admissibility of the underlying statements as they contain multiple levels of hearsay.

32. During the June 3 meeting, Hedgepeth acknowledged that the post with her remark about the term "white privilege" being "as racist as the 'N' word" was a comment that she posted in response to a Facebook post from Kearra Harris, and that the post was then captured and shared by others. Hedgepeth affirmed that she believed the terms "white privilege" and the "N word" were both racist terms but admitted that she "could have stated it differently." She asserted that her statements about murder rates and abortions were grounded in facts, not her opinions. Ex. 3, ¶ 16; Ex. 26, p. 3.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she made the statements attributed to her in paragraph 32 at the June 3, 2020 meeting. Plaintiff disputes that the statements attributed to her in paragraph 32 fully reflect her comments at the meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statements referenced paragraph 32 at the June 3, 2020 meeting.

33. With respect to her post about the "civil war" beginning and needing a gun and training, Hedgepeth stated that "it seemed like a civil war in large cities" and "I am scared of them and the way society is acting." With reference to a gun, she stated that she lives near the woods and has had people on her deck. Ex. 3, ¶ 16; Ex. 26, p. 3.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she made the statements attributed to her in paragraph 33 at the June 3, 2020 meeting. Plaintiff disputes that the statements attributed to her in paragraph 33 fully reflect her comments at the meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statements referenced paragraph 33 at the June 3, 2020 meeting.

34. With respect to the meme suggesting that "rioters" be hosed down with the contents of a septic truck, Hedgepeth stated that she thought the comment was a joke. Asked if she could see the comment from any other perspective, Hedgepeth asked "What is racist?" and stated again that the comment was not serious and intended as a joke. She said that she was "troubled" that people think she is

racist. She also added that she thought "before the riots, I've said we were heading for a civil war for a year or two." Ex. 3, ¶ 16; Ex. 26, p. 3.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she made the statements attributed to her in paragraph 34 at the June 3, 2020 meeting. Plaintiff disputes that the statements attributed to her in paragraph 34 fully reflect her comments at the meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statements referenced paragraph 34 at the June 3, 2020 meeting.

35. In reference to her "N word" comment, Hedgepeth acknowledged that there was history behind the "N" word and referenced a Washington Post article about it. She went on to state "Martin Luther King died because of the 'N' word; I get the power of it." Ex. 3, ¶ 16; Ex. 26; pp. 3-4.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she made the statements attributed to her in paragraph 35 at the June 3, 2020 meeting. Plaintiff disputes that the statements attributed to her in paragraph 35 fully reflect her comments at the meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statements referenced paragraph 35 at the June 3, 2020 meeting.

36. Hedgepeth acknowledged during the June 3, 2020 meeting that she would not have shared the views expressed in her Facebook posts in the classroom "unless [she] gave both sides." She stated that in her classroom, she did not express her own

opinion, and claimed that she establishes a classroom that "has respect for each other" but that "some are afraid to speak up" in the classroom. She also added that "Students don't need to know my opinions." Ex. 3, ¶ 16; Ex. 26, p. 4.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that she made the statements attributed to her in paragraph 36 at the June 3, 2020 meeting. Plaintiff disputes that the statements attributed to her in paragraph 36 fully reflect her comments at the meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statements referenced paragraph 36 at the June 3, 2020 meeting.

37. During her June 3, 2020 meeting with Britton, Hedgepeth told Britton that she was Facebook friends with "hundreds to thousands" of people, and that 80 percent of her Facebook friends were former students. During her deposition, Hedgepeth estimated that as of May 31 and June 1, 2020, she had approximately 800 friends associated with her Facebook account. She did not know whether any of those former students had siblings who were still District 211 students. Ex. 1, 24:20-25:1, 43:15-44:6; Ex. 2, 63:11-22, 249:7-22; Ex. 3, ¶ 16; Ex. 26, p. 4.

PLAINTIFF'S RESPONSE:

Plaintiff disputes that the first sentence reflects the full extent of her comments at the June 3, 2020 meeting regarding her posts. Plaintiff objects to the materiality or relevance of whether she made the statement attributed to her in the first sentence at the June 3, 2020 meeting or whether she made the statement attributed to her in the second sentence at

her deposition. Plaintiff does not dispute the second or third sentences.

38. Hedgepeth understood her posts regarding the "civil war" and mobilizing septic trucks to hose down "rioters" with sewage could be viewed by her Facebook friends. She did not think about who might see her comment in response to Kearra Harris but understood that others could see it. She did not consider whether students might see her post. Even if a Facebook post is set so that it is visible only to one's Facebook "friends," anyone with access to the post can choose to share the material more broadly. Ex. 1, 27:24-28:5, 29:8-30:3; Ex. 2, 211:19-212:1.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first sentence. Plaintiff disputes the second and third sentences. Both sentences mischaracterize Plaintiff's deposition testimony. Defs' Ex. 1, pg. 29:17-24. Plaintiff does not dispute the fourth sentence.

39. On June 11, 2020, Hedgepeth sent an e-mail to Small in which she included the text of a message that she addressed to a community member named Tim McGowan. Although McGowan is now a member of the District 211 Board of Education, he was not affiliated with the District in June 2020. In her message to Small, Hedgepeth stated that she posted the message to McGowan as a comment on McGowan's Facebook page in response to a video that McGowan had posted, in addition to sending it to him via "Messenger." Ex. 1, 108:16-109:20; Ex. 17, ¶ 7; Ex. 23; Ex. 24.

PLAINTIFF'S RESPONSE:

Undisputed.

40. On June 12, 2020, Small and Britton met with Hedgepeth and her Union representatives. During the meeting, Small told Hedgepeth that she intended to recommend to the Board of Education that it dismiss Hedgepeth from her employment. Ex. 3, ¶ 17; Ex. 25.

PLAINTIFF'S RESPONSE:

Undisputed.

41. After learning of Small's intention to recommend dismissal, Hedgepeth met privately with her Union representatives. Upon returning to the meeting room, Hedgepeth tendered her resignation, to be effective at the District Board meeting dated June 18, 2020. Ex. 3, ¶¶ 17-18; Ex. 17, ¶ 14; Ex. 33.

PLAINTIFF'S RESPONSE:

Undisputed.

42. District 211 Board of Education meetings include time set aside for members of the public to address the Board. This public comment period is typically one hour, with each speaker limited to three to five minutes. Typically, at the time, there were zero to one members of the public who sought to speak at each board meeting. Ex. 17, ¶ 15.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first or second sentences. Plaintiff disputes the third sentence. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 39.

43. Because of the pandemic, public comments for the June 18, 2020 Board of Education meeting were submitted in writing and read by the Board president.

Approximately 61 comments were submitted for the June board meeting by various members of the public. Of these, approximately 48 were negative. Thirteen commentors wrote in support of Hedgepeth. Most of those supporting Hedgepeth identified themselves as Hedgepeth's friends or members of her family. Due to the volume of comments received, the Board President was able to read fewer than half of the comments received during the allotted public comment time. Ex. 17, ¶ 16.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first sentence. Plaintiff disputes the second sentence. Plaintiff objects to the admissibility of the third, fourth, and fifth sentences as the statements contained therein are hearsay. Plaintiff does not dispute the sixth sentence. Plf's Ex. 13 (Aylmer Decl.) at ¶¶ 3 & 11-14 (analyzing Defs' Ex. 36).

44. Shortly before the June 18, 2020 board meeting, the District was advised by Hedgepeth's attorney that Hedgepeth was rescinding her resignation. Because Hedgepeth rescinded her resignation just before the Board meeting, the Board did not take any action with respect to Hedgepeth's employment at the June 18, 2020 meeting. Ex. 3, ¶ 19.

PLAINTIFF'S RESPONSE:

Undisputed.

VI. The Administration Recommends Hedgepeth's Dismissal

45. After Hedgepeth's Facebook posts drew public attention, PHS Principal Tony Medina heard from many people, including multiple school staff and then-

current students, who wanted to speak with him over Zoom and in person to discuss Hedgepeth's posts. Further, summer school was in session at the time. Medina was informed by teachers and students that school was being interrupted by teachers and students having to have conversations about Hedgepeth's posts. Ex. 32, ¶ 3.

PLAINTIFF'S RESPONSE:

Disputed. Plaintiff objects to statements purportedly made to Principal Medina on the grounds that such statements are inadmissible hearsay. Plaintiff also objects to Principal Medina's declaration as irrelevant and immaterial because Principal Medina did not appear before the Defendant District 211's board on July 16, 2020 and his assertions or opinions were not presented to the board. Plf's Ex. 12 (Defs' Answers to Plf's 1st Set of Request for Admission to Defendant District 211) at Response to Request Nos. 5 and 6.

46. Principal Medina did not believe that Hedgepeth could be an effective teacher at Palatine High School because, in a school with a substantial minority population, it would be difficult for Hedgepeth to build trusting relationships with students of color in light of her statements that racism does not exist and that anyone who believes otherwise has been "hoodwinked" by liberals and "race-baiters." Principal Medina based this conclusion on the content of Ms. Hedgepeth's posts as well as e-mail and oral communications that he received from current students and others, many of whom said that they viewed her posts as racist. He also considered Hedgepeth's past conduct involving intemperate

outbursts in the presence of students that resulted in her being suspended twice and issued a notice to remedy. Ex. 32, ¶ 4.

PLAINTIFF'S RESPONSE:

Plaintiff objects to Principal Medina's declaration as irrelevant and immaterial because Principal Medina did not appear before the Defendant District 211's board on July 16, 2020 and his assertions or opinions were not presented to the board. Plaintiff also disputes that Medina's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

47. Based upon the circumstances his experience as an educator, Principal Medina believed that continuing to employ Hedgepeth as a social studies teacher at Palatine High School would have negatively impacted the school's minority students, resulted in continued disruption and distraction from the school's educational mission, insulted members of the school and district community, and negatively impacted the reputation of Palatine High School and District 211. Medina voiced these concerns to Small and Britton and recommended that Hedgepeth be dismissed from her employment with the District. Ex. 32, ¶ 5.

PLAINTIFF'S RESPONSE:

Plaintiff objects to Principal Medina's declaration as irrelevant and immaterial because Principal Medina did not appear before the Defendant District 211's board on July 16, 2020 and his assertions or opinions were not presented to the board. Plaintiff disputes that Medina's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's

posts. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

48. From June 1 to July 14, 2020, the District received over 135 emails and phone calls relating to Hedgepeth's Facebook posts. The vast majority of these were negative, and many of them called for Hedgepeth's removal from the classroom. Ex. 3, ¶ 20.

PLAINTIFF'S RESPONSE:

Disputed. Plaintiff objects to the admissibility of the contents of the emails and phone calls as the statements contained therein are hearsay. Plf's Ex. 13 (Aylmer Decl.) at ¶¶ 3-10 (analyzing Defs' Ex. 34).

49. In a memorandum detailing his investigation, Britton concluded that Hedgepeth was aware that many of her Facebook friends had connections to PHS and had developed her network of Facebook friends because of her relationship to them as a teacher at PHS. He concluded that because of this, her comments were attributed not just to her, but to PHS and the district as a whole, leading to complaints from former students, current students, parents, and staff that Hedgepeth's comments were inconsistent with values that the District should uphold. Ex. 3, ¶ 21; Ex. 26.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that Britton authored the July 14, 2020 memorandum to Small or that the memorandum contains conclusions reached by Britton. Plaintiff objects to paragraph 49 because it is unclear whether the fact(s) presented as undisputed is the fact that Britton reached conclusions, the substance of the conclusions Britton reached, or the

facts underlying those conclusions. To the extent paragraph 49 asserts that the substance of Britton's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects that the second sentence in particular is vague, ambiguous, and compound. In addition, Plaintiff objects to the second sentence to the extent it purports to address the contents of communications from third parties, which are inadmissible hearsay. Plaintiff disputes that her posts were or could fairly or reasonably be attributed to PHS or District 211 or that the evidence demonstrates that anyone attributed the posts to the PHS or District 211 and not to Plaintiff alone. Defs' Ex. 15 (Plf's posts); Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 6. Plaintiff also disputes that her posts were inconsistent with District values or that Britton's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Defs' Ex. 5 (District Policy AF) ("Our District values an open exchange of information and perspectives ... Our District values the continuous pursuit of knowledge."); Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

50. Britton further concluded that Hedgepeth's comments disqualified her from her role as a teacher because she revealed her biases, implicitly advocated violent and dehumanizing responses to protestors, and could no longer serve as an appropriate role model for others. He noted that Hedgepeth had previously been disciplined on two occasions and mandated to attend counseling because of her failure to develop control over her emotions and words so as to treat students with respect. He found that Hedgepeth's posts revealed that she had developed little awareness

of her impact on students and the school community, and that she could no longer serve as a role model because her actions and words conflicted with the basic tenet that "we should not harm students." He concluded that Hedgepeth failed to treat students with dignity in the classroom and broadcast in a public space words that devalue and demean while knowing that the space was populated by those who recognize her as a teacher. Ex. 3, ¶ 21; Ex. 26, pp. 5-6.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that Britton authored the July 14, 2020 memorandum to Small or that the memorandum contains conclusions reached by Britton. Plaintiff objects to paragraph 50 because it is unclear whether the fact(s) presented as undisputed is the fact that Britton reached conclusions, the substance of the conclusions Britton reached, or the facts underlying those conclusions. To the extent paragraph 50 asserts that the substance of Britton's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects to paragraph 50 on the grounds that it is compound, containing multiple assertions and multiple layers of assertions. Plaintiff disputes that Britton's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Plaintiff also disputes that she harmed students in any way. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

51. The number of phone calls, e-mail messages, and other communications that the District received regarding Hedgepeth's Facebook posts vastly exceeded the public response to any other

controversial issue that Dr. Small could recall arising during her tenure with the District. To the best of Dr. Small's knowledge, never before or since has the District received so many direct calls for the dismissal of a teacher as it received in June and July 2020 in reference to Hedgepeth. Ex. 17, ¶ 8.

PLAINTIFF'S RESPONSE:

Plaintiff objects to the assertions contained in paragraph 51 because it is ambiguous as to whether paragraph 51 purports to reflect Small's memory and knowledge or historical facts. Plaintiff disputes the first sentence to the extent it purports to reflect a historical fact. Plf's Ex. 1 (Hedgepeth Decl.) ¶ 39.

52. Because of the Hedgepeth's Facebook posts and the resulting public outcry, District administrators were forced to spend an inordinate amount of time in June and July 2020 addressing the issue and determining how best to mitigate the damage caused by Hedgepeth's actions. This created an unnecessary distraction from other important issues occurring at the time, including but not limited to the District's response to the ongoing COVID-19 pandemic. Ex. 17, ¶ 9.

PLAINTIFF'S RESPONSE:

Disputed. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 40-41; Plf's Ex. 16 (Minutes of June 18, 2020 Meeting); Plf's Ex. 17 (Minutes of July 16, 2020 Meeting).

53. Based upon her prior conduct, the content of her Facebook posts, the feedback that the District received from current and former students, parents, and other community members, Hedgepeth's failure to abide by the request to refrain from further posts on

Facebook during the District's investigation, and Hedgepeth's complete failure to understand or acknowledge why many people found her posts to be offensive and racist, Dr. Small concluded that Hedgepeth could no longer effectively serve as a social studies teacher in District 211. Ex. 17, ¶ 10.

PLAINTIFF'S RESPONSE:

Plaintiff objects to paragraph 53 because it is unclear whether the fact(s) presented as undisputed is the fact that Small reached conclusions, the substance of the conclusions Small reached, or the facts underlying those conclusions. To the extent paragraph 53 asserts that the substance of Small's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects to paragraph 53 on the grounds that it is compound, containing multiple assertions and multiple layers of assertions. Plaintiff objects further to paragraph 53 to the extent it is a post hoc reimaging of the packet of materials presented to the board and Small's presentation to the board at the July 16, 2020 board meeting. *See* Defs' Stmt. at ¶ 59; Defs' Ex. 27 (July 16, 2020 Tr. (1st) at 6:19-9:5; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 13:14-14:3. Plaintiff disputes that Small's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

54. The District expects teachers to serve as role models for students and to create a classroom environment in which students feel that they have a safe place to voice their opinions and participate in open, respectful dialogue and debate. Ex. 17, ¶ 11.

PLAINTIFF'S RESPONSE:

Undisputed.

55. Dr. Small felt that Hedgepeth's Facebook posts were inconsistent with these expectations, and that Hedgepeth displayed no understanding or appreciation for the fact that many people who saw her posts might—and in fact did—see them as disrespectful, demeaning, dismissive of other viewpoints, and racist. She found that the overwhelming negative response to Hedgepeth's posts made it clear that many students would not feel that they could safely voice their opinions regarding sensitive subjects such as race in Hedgepeth's classroom. Based upon feedback that the District received regarding Hedgepeth, Small believed it highly likely that parents and students would object to students being assigned to Hedgepeth's class, and that Hedgepeth's presence would result in ongoing distraction and disruption to the District's educational mission. Ex. 17, ¶ 11.

PLAINTIFF'S RESPONSE:

Plaintiff objects to paragraph 55 because it is unclear whether the fact(s) presented as undisputed is the fact that Small reached conclusions, the substance of the conclusions Small reached, or the facts underlying those conclusions. To the extent paragraph 55 asserts that the substance of Small's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects to paragraph 55 on the grounds that it is compound, containing multiple assertions and multiple layers of assertions. Plaintiff objects further to paragraph 55 to the extent it is a post hoc reimaging

of the packet of materials presented to the board and Small's presentation to the board at the July 16, 2020 board meeting. See Defs' Stmt. at ¶ 59; Defs' Ex. 27 (July 16, 2020 Tr. (1st) at 6:19-9:5; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 13:14-14:3. Plaintiff disputes that Small's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

56. Small concluded that Hedgepeth had violated Board policies, including Board Policy KA, "School-Community Relations Goals," which requires employees of District 211 to exhibit and maintain "just and courteous professional relationships with pupils, parents, staff members and others"; Board Policy GCA, which provides that teachers must "provide guidance to students which will promote welfare and proper educational development," and Board Policy GBAD - Social Media and Electronic Communication, which requires that "[e]mployees using any form of social media or electronic communication must abide by all district policies and legal requirements" and that "[a]ny duty-free use must not interfere with the employee's job duties or the school environment." Small also found that Hedgepeth's conduct was contrary to the value statements in Board Policy AF, including "Compassion, Dignity and Respect," meaning that the District "values and honors the strength and diversity of all individuals." Ex. 17, ¶ 12.

PLAINTIFF'S RESPONSE:

Plaintiff objects to paragraph 56 because it is unclear whether the fact(s) presented as undisputed is the fact that Small reached conclusions, the substance

of the conclusions Small reached, or the facts underlying those conclusions. To the extent paragraph 56 asserts that the substance of Small's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects to paragraph 56 on the grounds that it is compound, containing multiple assertions and multiple layers of assertions. Plaintiff objects further to paragraph 56 to the extent it is a post hoc reimaging of the packet of materials presented to the board and Small's presentation to the board at the July 16, 2020 board meeting. *See* Defs' Stmt. at ¶ 59; Defs' Ex. 27 (July 16, 2020 Tr. (1st) at 6:19-9:5; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 13:14-14:3. Plaintiff disputes that Small's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

57. Based upon Hedgepeth's violation of Board policies, her prior conduct, her failure to heed prior disciplinary warnings including a Notice to Remedy, and her evident lack of any understanding or appreciation for why many people found her comments objectionable, Small concluded that there was no reason to believe that action short of dismissal, such as a third suspension or a second notice to remedy, would be likely to deter Hedgepeth from engaging in similarly damaging conduct in the future. Ex. 17, ¶ 13.

PLAINTIFF'S RESPONSE:

Plaintiff objects to paragraph 57 because it is unclear whether the fact(s) presented as undisputed is the fact that Small reached conclusions, the substance

of the conclusions Small reached, or the facts underlying those conclusions. To the extent paragraph 57 asserts that the substance of Small's conclusions is undisputed, Plaintiff objects that the conclusions are opinions and characterizations, not facts. Plaintiff also objects to paragraph 57 on the grounds that it is compound, containing multiple assertions and multiple layers of assertions. Plaintiff objects further to paragraph 57 to the extent it is a post hoc reimaging of the packet of materials presented to the board and Small's presentation to the board at the July 16, 2020 board meeting. *See* Defs' Stmt. at ¶ 59; Defs' Ex. 27 (July 16, 2020 Tr. (1st) at 6:19-9:5; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 13:14-14:3. Plaintiff disputes that Small's conclusions are a fair, accurate, unbiased, or informed reading of Plaintiff's posts. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7-31; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

58. In closed session during the Board of Education meeting on July 16, 2020, Small recommended to the Board of Education that it dismiss Hedgepeth from her employment as a teacher in District 211. After Small spoke, Hedgepeth's attorney delivered a response, arguing against dismissal. Hedgepeth would have been allowed to attend the meeting and speak on her own behalf, if she wished to do so, but elected not to attend. Ex. 17, ¶ 18.

PLAINTIFF'S RESPONSE:

Undisputed.

59. Prior to the meeting, the Board was provided with a copy of Britton's July 14, 2020 memorandum (Defendants' Exhibit 26), and drafts of a "Resolution Regarding the Suspension and Dismissal of a Tenured

Employee (Jeanne Hedgepeth)" (the "Resolution") and the accompanying exhibits, including a Notice of Charges, Bill of Particulars, and Hearing. Ex. 17, ¶ 19.

PLAINTIFF'S RESPONSE:

Undisputed.

60. During the public comment portion of the July 2019 board meeting, members of the public were able to directly address the Board rather than submitting written comments. 19 members of the public addressed the Board during that meeting, with nearly all urging the District to do more to promote equity for students of color. Ten of the nineteen speakers referred to Hedgepeth, and of those, eight expressly called for her dismissal or otherwise referenced her in a clearly negative light. Ex. 17, ¶ 17.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute the first sentence. Plaintiff disputes the second and third sentences. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 41; Plf's Ex. 17 (Minutes of July 16, 2020 Meeting).

61. After hearing Small's recommendation and the response from Hedgepeth's counsel, the Board deliberated in closed session. Following deliberation, the Board voted to approve the Resolution. Ex. 17, ¶ 21; Ex. 28.

PLAINTIFF'S RESPONSE:

Undisputed.

62. The Board served the Resolution together with the Notice of Charges and Bill of Particulars upon Hedgepeth. Hedgepeth was advised of her right to

request a hearing before a hearing officer selected through the Illinois State Board of Education under School Code Section 24-12, 105 ILCS 5/24-12. Hedgepeth requested a dismissal hearing before a neutral hearing officer. Jacalyn J. Zimmerman was appointed as the neutral hearing officer. Ex. 3, ¶¶ 22-23.

PLAINTIFF'S RESPONSE: Undisputed.

63. On December 15, 2020, Hedgepeth responded to the Bill of Particulars. In her answer, Hedgepeth admits posting the previously discussed content on Facebook. Hedgepeth further admitted that she was subject to discipline, including a suspension and a Notice to Remedy, for previous violations of District policies. Hedgepeth denied that her actions constituted cause for termination. She asserted that her Facebook posts were speech protected by the First Amendment. Ex. 19, ¶ 5; Ex. 29, p. 5.

PLAINTIFF'S RESPONSE: Plaintiff admits that she responded to the Bill of Particulars on or about December 15, 2020. Plaintiff disputes Defendants' characterization of her response to the Bill of Particulars and respectfully refers the Court to her response for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 29.

64. Hedgepeth was represented by counsel throughout the hearing process. Prior to the dismissal hearing, the parties had the opportunity to engage in discovery including written interrogatories and requests for production of documents. Ex. 19, ¶¶ 4, 6.

PLAINTIFF'S RESPONSE:

Undisputed.

65. The dismissal hearing was conducted before Hearing Officer Zimmerman on March 10 and April 9, 2021. During the hearing, both the Board and Hedgepeth had the opportunity to call witnesses, offer documents into evidence, cross examine witnesses, and present arguments. The hearing was transcribed by a court reporter. Ex. 2; Ex. 19, ¶ 7.

PLAINTIFF'S RESPONSE:

Undisputed.

66. During the hearing and in post-hearing briefing, Hedgepeth, through her counsel, maintained that Hedgepeth could not be discharged for her Facebook posts because the posts constituted protected speech under the First Amendment. Ex. 2, 17:6-18:6; Ex. 20, pp. 1, 28-30, 32-35, 43-44.

PLAINTIFF'S RESPONSE:

Undisputed.

THE HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS AND THE BOARD'S DETERMINATION

67. On October 26, 2022, Hearing Officer Zimmerman issued her Findings of Fact and Recommendation (the "Report"). In the Report, Hearing Officer Zimmerman concluded that the Board was justified in dismissing Hedgepeth from employment. Specifically, Hearing Officer Zimmerman found that Hedgepeth's Facebook posts violated a March 14, 2019 Notice to Remedy issued to Hedgepeth after she became agitated in class and told

a student to "do [his] fucking homework" and "read the fucking chapter." Ex. 19, ¶ 9; Ex. 30, pp. 27-29.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

68. The Hearing Officer also found that Hedgepeth's posts were not private in nature; that Hedgepeth did not think about their popular circulation and the resulting community reaction, and that "circulate they did." The Hearing Officer found that "In a real if not literal sense, the students were present to hear her remarks." Ex. 19, ¶ 9; Ex. 30, p. 28.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the

Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

69. The Hearing Officer also concluded that the posts were "far worse than the angry and profane classroom conduct which led to two suspensions." She found that the posts were "offensive, demeaning, and disrespectful to anyone who looked at their plain words, especially in her dialogue with Ms. Harris, a former student." She noted that Hedgepeth's "complete dismissal and denigration of any other view, especially in the context of the George Floyd protests, clearly fell within the prohibition of her Notice to Remedy." Ex. 19, ¶ 9; Ex. 30, pp. 28-29.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See*

Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

70. The Hearing Officer found that Hedgepeth's posts failed to treat students in a respectful manner and "value and honor the strength and diversity of all individuals," in violation of Board Policy AF and thereby the Notice to Remedy mandate to become familiar with and obey all District rules. The Hearing Officer also found that Hedgepeth violated the Board's social media policy by engaging in conduct that was likely to, and did, cause substantial disruption in the school community and which interfered with her ability to perform her job duties in the school environment. Ex. 19, ¶ 9; Ex. 30, p. 29.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains

multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

71. The Hearing Officer also concluded that Hedgepeth's conduct was irremediable, finding that "it is abundantly clear that no additional notice would have caused Ms. Hedgepeth to cease her inappropriate conduct," and further that "It is also abundantly clear that Ms. Hedgepeth's posts caused irreparable harm to the school community." The Hearing Officer noted that Hedgepeth showed no understanding of why her conduct was problematic or why she could not simply say whatever she wanted on Facebook. Ex. 19, ¶ 9; Ex. 30, pp. 30-31.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the

purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

72. The Hearing Officer also concluded that Hedgepeth was directed, and agreed, to stay off of social media while the matter was being investigated, but almost immediately did the exact opposite, feeling the need to educate a community member about her perspective and referring to those who disputed it as "enemies." Ex. 19, ¶ 9; Ex. 30, p. 30.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

73. The Hearing officer noted that there was a "significant and largely negative community response" to Hedgepeth's posts, "with questioning of Ms. Hedgepeth's ability to represent the District and function as a teacher." The Hearing Officer also found that "School administrators spent a significant amount of time, in meetings and by phone calls, addressing these concerns." Ex. 19, ¶ 9; Ex. 30, pp. 30-31.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

74. The Hearing Officer also concluded that Hedgepeth's conduct "compromised, beyond repair in my opinion, her ability to continue to function effectively in her role at the District." The Hearing Officer found that Hedgepeth's posts "destroyed any

possibility that she could be viewed as a fair and honest arbiter in the students' expressions of different perspectives." She found that it was "clear on this record that her students would be aware of what appeared to be ironclad views she expressed on Facebook, that she maintained that her views were the only legitimate ones, and that she had already insulted and demeaned positions no doubt held by some, if not the majority, of her students." The Hearing Officer concluded that, as a result, Hedgepeth "could not credibly lead a productive discussion among her students on significant issues in society and therefore was unable to perform one of the critical functions of a social studies teacher." Ex. 19, ¶ 9; Ex. 30, p. 31.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-

14 (not citing any allegedly undisputed material facts beyond paragraph 60).

75. Hearing Officer Zimmerman's Findings of Fact and Recommendation specifically addressed Hedgepeth's defense that her Facebook posts were protected by the First Amendment. The Hearing Officer discussed First Amendment case law and applied the law to the facts of the case. Applying the balancing test from *Pickering v. Board of Educ. of Twshp. H.S. Dist. 205*, 391 U.S. 563 (1968), Hearing Officer Zimmerman concluded that, although Hedgepeth's speech touched on matters of public concern, the District's interest in promoting the efficiency of its public services outweighed her speech interest under the First Amendment. She therefore concluded that the First Amendment did not bar the District from dismissing Hedgepeth from employment because of her Facebook posts. Ex. 19, ¶ 9; Ex. 30, pp. 35-36.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects further on the grounds that the statements in paragraph 75 are not statements of fact but instead are legal conclusions. Plaintiff also objects on the further grounds that the Hearing Officer's Report is only

relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

76. Hearing Officer Zimmerman found that, far from being mere private discussions, "Ms. Hedgepeth's posts were made in a highly public forum," and that Hedgepeth had admitted in the course of the hearing that anyone could see her posts "if they wanted to." The Hearing Officer found that, as a public educator, Hedgepeth was required to "interact with school administrators, fellow teachers and other staff, and, most significantly, students," and that her posts "caused sig- nificant unrest among current students, parents, coworkers, and the community," as "clearly demonstrated by the influx of messages condemning her social media posts and calling for her removal from the District." The Hearing Officer further found that Hedgepeth's statements "obviously harmed her relationship to the community and to District students and parents, and threatened to harm their relationship to the District as well." Ex. 19, ¶ 9; Ex. 30, p. 36.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents

and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported res judicata and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to Pickering balancing. See Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

77. The Hearing Officer concluded that "the District reasonably inferred from all of the circumstances that Ms. Hedgepeth's speech would hinder the delivery of educational services to District students" and that "her inflammatory opinions on issues central to her students' lives will undeniably impact the District's delivery of services." She further concluded that "the prediction that racially diverse students would be uncomfortable sharing a space with or being taught by Ms. Hedgepeth and potentially unable to learn is more than reasonable." Ex. 19, ¶ 9; Ex. 30, p. 36.

PLAINTIFF'S RESPONSE:

Plaintiff does not dispute that the Hearing Officer issued the Report on or about October 26, 2022. Plaintiff disputes Defendants' characterization of the Report and respectfully refers the Court to the Report for a complete and accurate statement of its contents and denies any allegations inconsistent therewith. *See* Defs' Ex. 30. Plaintiff also objects on admissibility

grounds, as the Hearing Officer's Report contains multiple levels of hearsay. Plaintiff objects on the further grounds that the Hearing Officer's Report is only relevant to Defendants' legal argument about the purported *res judicata* and collateral estoppel effect of Defendants' November 10, 2022 board resolution, as Defendants have not and do not argue that the report raises or concerns any dispute of material fact relevant to *Pickering* balancing. *See* Defs' Mem. at 11-14 (not citing any allegedly undisputed material facts beyond paragraph 60).

78. At its meeting on November 10, 2022, the Board of Education approved a Resolution and Order Dismissing for Cause Jeanne Hedgepeth as a Tenured Teacher, a copy of which is attached hereto as Exhibit 2 (the "Order"). Hearing Officer Zimmerman's Findings of Fact and Recommendation was attached to the Order as an exhibit. In the Order, the Board incorporated hearing Officer Zimmerman's findings of fact as the basis for dismissal of Hedgepeth as a tenured teacher and accepted the Hearing Officer's recommendation to dismiss Hedgepeth from employment. Ex. 3, ¶ 25; Ex. 31.

PLAINTIFF'S RESPONSE:

Undisputed.

79. On November 15, 2022, Board's Order was served upon Hedgepeth by depositing it in the United States mail, in a sealed package, with postage prepaid for certified delivery, addressed to Hedgepeth at her last known place of residence. Ex. 3, ¶ 26.

PLAINTIFF'S RESPONSE:

Undisputed.

80. Hedgepeth has not initiated an administrative review action in circuit court to challenge the Board's November 10, 2022 Order. Ex. 3, ¶ 27.

PLAINTIFF'S RESPONSE:

Undisputed.

* * *

Appendix E

Defendants' Response to Plaintiff's Statement of Additional Facts (Aug. 25, 2023)

Defendants, James A. Britton, Kimberly Cavill, Anna Klimkowicz, Robert J. LeFevre, Jr., Lisa A. Small, Steven Rosenblum, Edward M. Yung and the Board of Education of Township High School 211, by and through their attorneys, hereby respond to Plaintiff's Statement of Additional Facts as follows:

1. Board Policy AF states, under "Communication," "Our District values an open exchange of information and perspectives." Defs' Ex. 5 (District 211 Board Policy AF).

Response: Undisputed.

2. Neither Plaintiff's Facebook posts nor her Facebook page identified Plaintiff as a Palatine High School or District 211 teacher or employee. The Facebook posts at issue were made during summer break, when Plaintiff was on vacation in Florida. She did not reference teachers, students, schools, or education. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 6; Def's Ex. 5 (Plaintiff's Facebook Posts).

Response: Defendants do not dispute that Plaintiff's May 31 and June 1, 2020 Facebook posts at issue in this litigation and Plaintiff's Facebook page did not expressly identify her as a Palatine High School teacher, but Defendants object to this assertion as immaterial in view of the fact that Plaintiff was known as a Palatine High School teacher to the vast majority of her hundreds of Facebook friends. *See* Def. Ex. 1, 24:20-25:1, 43:15-44:6; Def. Ex. 2, 63:11-22, 249:7-22; Def. Ex. 3, ¶ 16; Def. Ex. 26, p. 4. Defendants do not

dispute that Plaintiff was vacationing in Florida during summer break when she posted her May 31 and June 1, 2020 Facebook posts. Defendants do not dispute that Plaintiff's posts did not expressly discuss teachers, students, schools, or education. Defendants object that Paragraph 2 is immaterial.

3. Defendants admit Plaintiff's speech was a substantial or motivating factor in their decision to terminate Plaintiff's employment. ECF No. 20 (Answer), attached as Plf's Ex. 2, at pg. 11, ¶33; ECF No. 45 (Amended Answer), attached as Plf's Ex. 3 at pg. 11, ¶ 33 (same).

Response: Undisputed.

4. Sometime on or before June 12, 2020, Britton recommended to Small and Small recommend to the board that Plaintiff be fired. Def's Ex. 2 (ISBE Hearing Tr.) at 95:11-96:1; Defs' Ex. 25 (Notes of June 12, 2020 Meeting); Plf's Ex. 5 (Britton Dep.) at 84:7-23, 91:8-14; 213:7-214:12; Plf's Ex. 10 (Small Dep.) at 56:4-13.

Response: Defendants admit that Dr. Britton initially recommended that Plaintiff be dismissed from employment on or before June 12, 2020, and that Dr. Small advised Hedgepeth on June 12, 2020 that she intended to recommend to the Board that Hedgepeth be dismissed from employment. Defendants deny that Dr. Small conveyed her recommendation to the Board on June 12, 2020. Def. Ex. 16, Small Dep. 56:4-24.

5. The notice of charges/bill of particulars adopted by District 211's board on July 16, 2020 describes Plaintiff's speech as "revealing [her] biases," being inconsistent with the District's values, and using "racially charged language" and "words that

devalue and demean." The document contains only generalized, conclusory assertions about Plaintiff's ability to perform her duties and makes little if any meaningful reference to disruption resulting from Plaintiff's speech. Defs' Ex. 28 (Notice of Charges/Bill of Particulars).

Response: Defendants do not dispute that the notice of charges/bill of particulars adopted by District 211's board on July 16, 2020 describes Plaintiff's Facebook posts as, among other things, "revealing [her] biases," being inconsistent with the District's values, using "racially charged language" and "words that devalue and demean." Defendants object to the remainder of Paragraph 5 as improperly argumentative and dispute Plaintiff's characterizations of the Notice of Charges and Bill of Particulars, which speaks for itself. Def. Ex. 28.

6. Plaintiff's speech was influenced by political commentator and California gubernatorial candidate Larry Elder, activist and speaker Candace Owens, and most significantly, Dr. Thomas Sowell, a University of Chicago trained economist, author, social commentator and senior fellow at the Hoover Institution at Stanford University, among other Black conservatives and other conservative thinkers and commentators. Except for the "Wanna Stop the Riots" satirical post, most if not all of her comments, including the statistics Plaintiff cited, can be linked to similar statements by Mr. Elder, Ms. Owens, or Dr. Sowell. Plf's Ex. 1 (Hedgepeth Decl.) at ¶7; Plf's Ex. 4 (Swain Decl.) at 3-13; *see also* Defs' Ex. 26 (Britton Memo) at 3 (noting that Plaintiff told Britton that

statistics she cited were from the persons referenced in her post).

Response: Defendants do not dispute that Plaintiff was influenced by political commentator and California gubernatorial candidate Larry Elder, activist and speaker Candace Owens, and Dr. Thomas Sowell, a University of Chicago trained economist, author, social commentator and senior fellow at the Hoover Institution at Stanford University, among other Black conservatives and other conservative thinkers and commentators. Defendants dispute the characterization of Plaintiff's post as "satirical" as the cited exhibits do not support such assertion. Defendants do not dispute that Plaintiff has attempted to link her statements to those by Mr. Elder, Ms. Owens, or Dr. Sowell. Defendants object to the assertions in this paragraph as argumentative and immaterial.

7. None of the five individual Defendants who were asked about Dr. Sowell, Mr. Elder, or Ms. Owens had heard of them. Only Britton claimed to have googled them but could not describe anything he found, and his investigative memo did not mention googling the three or that he found out anything about them. Plf's Ex. 5 (Britton Dep.) at 174:23-175: 13; Plf's Ex. 6 (Klimkowicz Dep.) at 75:23-24; 76:13-21; Defs' Ex. 10 (Small Dep.) at 133:13-20; 135:5-136:1; PU"s Ex. 7 (Rosenblum Dep.) at 91:1-9; 94:5-21; 95:70-96:10; Plf's Ex. 8 (Yung Dep.) at 34:16-22; Defs' Ex. 26 (Britton Memo).

Response: Undisputed. Defendants object to the assertions in this paragraph as immaterial.

8. Plaintiff has substantial knowledge and background in political and social issues and current affairs derived from her formal and informal training and twenty-five years of experience teaching social studies Plf's Ex. 1 (Hedgepeth Decl.) at ¶1.

Response: Undisputed.

9. Plaintiffs reference to "Civil War" in her Facebook post was a rhetorical device to express her concern about the rioting, looting, and destruction that occurred in the wake of George Floyd's death, which she believed was symptomatic of the increasing division in the country. Numerous commentators, including Dr. Sowell, had used this same rhetorical device in this same manner, as had Plaintiff on other occasions. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶7 & 21-25.

Response: Defendants do not dispute that Plaintiff referred to a "Civil War" in her Facebook post or that the post was prompted by the protests and violence occurring in the wake of the murder of George Floyd, or that various parties have used the term "Civil War" in reference to divisions within the country. Defendants object to the assertions in this paragraph as argumentative and immaterial.

10. The "friend" with whom Plaintiff exchanged Face book posts regarding the violence in the Chicago area and elsewhere and Plaintiffs lack of desire to return from her vacation was Plaintiff's sister-in-law, Holly Dian Hedrich, a U.S. Navy veteran. Plaintiff explained to Britton that her comment to her sister-in-law about needing a gun and training referred to some troubling incidents at Plaintiffs home that caused her, a single-mother, to be concerned about her

and her teenage daughter's physical safety. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 27.

Response: Defendants do not dispute that the "friend" with whom Plaintiff exchanged Face book posts regarding the violence in the Chicago area and elsewhere and Plaintiffs lack of desire to return from her vacation was Plaintiff's sister-in-law, Holly Dian Hedrich, a U.S. Navy veteran. Defendants dispute that Plaintiff told Britton that her comment to her sister-in-law about needing a gun and training referred to some troubling incidents at Plaintiffs home that caused her, a single-mother, to be concerned about her and her teenage daughter's physical safety. Def. Ex. 3 at 55:19-58:4. Defendants object to the assertions in this paragraph as immaterial.

11. Plaintiff's "Wanna Stop the Riots" post was intended as satire. Plaintiff told Britton at their June 3, 2020 meeting that the post was "not serious" and "intended as a joke." Plaintiff had seen news reports about Black-owned businesses being destroyed by rioting, and "[i]t seemed like nobody seemed to care." She was not aware of any Palatine High School or District 211 student, family member of a student, former student, or even any Palatine or District 211 residents participating in the rioting, arson, looting, and violence occurring in the Chicago area at the time. She did not actually advocate spraying rioters with septic tank water and wanted to express her concern that the riots be stopped. Defs' Ex. 2 (Hedgepeth Dep.), at 41:7-10; 220:7-11 & 220:17-221:11; Plf's Ex. 1 (Hedgpeth Decl.) at 131.

Response: Defendants do not dispute that Plaintiff told Britton at their June 3, 2020 meeting that the

post was "not serious" and "intended as a joke." Defendants dispute that Plaintiff did not actually advocate spraying rioters with septic tank water and wanted to express her concern that the riots be stopped. Def. Ex. 15 at 3. Defendants object to the assertions in this paragraph as immaterial and argumentative.

12. Kearra Harris is a 2013 graduate of Palatine High School, and, at the time of the Facebook exchange with Plaintiff, was approximately twenty-five years old. Plaintiff and Harris were sharing comments about current affairs, not only about the death of George Floyd and its aftermath but also other matters. Ms. Harris commented about anti-Covid-19 lockdown protests in Michigan and, to the best of Plaintiff's recollection, asserted that law enforcement officials in Michigan had treated white anti-lockdown protesters there much better than law enforcement officials elsewhere treated black protesters protesting Mr. Floyd's death. Ms. Harris attributed the distinction to racism, asserting that the police's treatment of white protesters was peaceful and benign, but the treatment of black protesters was violent and brutal, leading to rioting and looting. Plaintiff respectfully disagreed. Ms. Harris replied and told Plaintiff, essentially, "shut up with your white privilege." Plaintiff responded with the post that began, "I am about facts, truth, and love." Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 8.A

Response: Defendants do not dispute that Kearra Harris is a 2013 graduate of Palatine High School, and, at the time of the Facebook exchange with Plaintiff, was approximately twenty-five years old.

Defendants dispute Plaintiff's characterization of the statements that Harris made on Facebook, as those characterizations are not supported by admissible evidence. Defendants admit that Plaintiff's post spoke for itself, and included the statement "I am about facts, truth, and love." Defendants object to Paragraph 12 as argumentative and immaterial.

13. Plaintiff challenged Ms. Harris to consider an alternative perspective, one that did not default to viewing such occurrences through a racial lens or necessarily attribute such distinctions to racism. Plaintiff believes that defaulting to race and racism can be harmful, especially to young people who may feel they can never be successful as a result. She also believes that exploring such questions is necessary to progress as a nation. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 9; Plf's Ex. 4 (Swain Decl.) at pgs. 10-11.

Response: Defendants admit that Plaintiff's Facebook post speaks for itself. Defendants object to Plaintiff's characterizations of her post and her subjective beliefs as argumentative and immaterial. For the reasons stated in Defendants' Reply brief, Defendants object to the admissibility of Ms. Swain's testimony, and therefore dispute the statements set forth in Paragraph 13.

14. In a further post, Ms. Harris wrote, "You just don't understand," or words to that effect. Plaintiff responded, "Then help me understand." Plf's Ex. 1 (Hedgepeth Decl.) at ¶10.

Response: Defendants dispute the matters asserted in Paragraph 14 as they are not supported by admissible evidence. Defendants object to Paragraph 14 as immaterial.

15. Britton was aware that Plaintiff's full exchange with Ms. Harris was not available but failed to note the unavailability of the full exchange in his memo to Small. The unavailability of the full exchange also was not included in the notice of charges/bill of particulars, nor did Small note it when she addressed the board at the July 16, 2020 meeting. Plf's Ex. 5 (Britton Dep.) at 28:23-29:2; Defs' Ex. 26 (Britton Memo); Defs' Ex. 27 (July 16, 2020 Tr. (1st)) at 6: 19-9:5.

Response: Defendants do not dispute the factual statements in Paragraph 15, but object to Paragraph 15 as it is argumentative and immaterial.

16. Britton acknowledged that it is not improper to discuss whether the term "White privilege" is as racist as the "N-word." Plf's Ex. 5 (Britton Dep.) at 145:14-18.

Response: Defendants do not dispute the factual statements in Paragraph 16, but object to Paragraph 16 as unsupported by admissible evidence.

17. Plaintiff's speech in the Kearra Harris exchange was well-rooted in contemporary Black conservativism, including Plaintiff's critique of the term "White privilege," her reference to Black murder statistics, her question about whether America is racist, and her reference "race baiters." Her thinking on all these topics was influenced by Dr. Sowell, Mr. Elder, and Ms. Owens, among others who made very similar assertions. Her use of the centuries-old term "hoodwinked" is consistent with the dictionary definition. Plf's Ex. 1 (Hedgepeth Decl.) at 117, 9-15, 26, & 27; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

Response: For the reasons stated in Defendants' Reply brief, Defendants object to the admissibility of Ms. Swain's testimony, and therefore dispute the statements set forth in Paragraph 17 as unsupported by admissible evidence. Defendants object to the assertions in Paragraph 17 because they are argumentative and immaterial.

18. Plaintiff's commentary on the Black abortion rate and reference to "Black genocide" also was well-rooted in both Black conservative and Black pro-life thought and echoed U.S. Supreme Court Justice Clarence Thomas' concurrence in *Box v. Planned Parenthood of Indiana*, 139 S. Ct. 1789 (2019) about the impact of the eugenics movement on Black Americans. Plf's Ex. 1 (Hedgepeth Decl.) at ¶¶ 7 & 18-22; Plf's Ex. 4 (Swain Decl.) at pgs. 3-13.

Response: For the reasons stated in Defendants' Reply brief, Defendants object to the admissibility of Ms. Swain's testimony, and therefore dispute the statements set forth in Paragraph 18 as unsupported by admissible evidence. Defendants object to Paragraph 18 as immaterial and argumentative.

19. The statistics regarding Black murder and Black abortion that Plaintiff cited are accurate, a fact Defendants did not seek to verify. Britton said he vaguely recalled trying to find the Black murder statistics cited by Plaintiff but didn't know if it was a fact. He did not try to confirm the Black abortion statistics. Plf's Ex. 1 (Hedgepeth Deel.) at ¶¶ 16-17 & 19; Plf's Ex. 4 (Swain Deel.) at pgs. 8-9 & 11; Plf's Ex. 5 (Britton Dep.) at 176:7-15, 183:4-7; Plf's Ex. 9 (Cavill Dep.) at 82:19-83:3, 84:9-16, 88:22-89:19; Plf's Ex. 6 (Klimkowicz Dep.) at 77:3-79:2; Plf's Ex. 7 (Rosenblum

Dep.) at 96:17-24, 97:6-19; Plf's Ex. 10 (Small Dep.) at 137:13-138:5; Plf's Ex. 8 (Yung Dep.) at 41:7-42:7, 43:20-24.

Response: Defendants admit that Defendants, including Britton, did not seek to verify Plaintiff's factual assertions regarding murder statistics and abortion rates. For the reasons stated in Defendants' Reply brief, Defendants object to the admissibility of Ms. Swain's testimony, and therefore dispute the remaining statements set forth in Paragraph 18 as unsupported by admissible evidence. Defendants further object to the assertions in this paragraph as argumentative and immaterial.

20. Plaintiff's expert, award-winning political scientist, author, commentator, former professor of political science and professor of law at Vanderbilt University, and current Distinguished Senior Fellow for Constitutional Studies at the Texas Public Policy Foundation Dr. Carol M. Swain, concludes in her report that:

- Plaintiff's "social media comments and postings are not racist statements. Instead, she expressed viewpoints rooted in black conservative thought and statistical data that challenged the dominant racial narratives pushed by the [National Educational Association] and [National School Board Association]."
- Plaintiff's "comments defending free speech and criticizing progressive racial narratives about white privilege and white guilt represent a viewpoint that, while not a commonly heard or dominant perspective, is

shared by millions of Americans. Many Americans have rejected the divisive race-baiting of [Critical Racial Theory] and rampant antiAmericanism."

- Plaintiff's "references to disproportionate black crime and abortion rates are truth statements supported by statistical data compiled by the FBI and other organizations that monitor the disparate impact abortion has on the black community."
- Plaintiffs termination "strikes me as viewpoint discrimination intended to suppress an important perspective. The view she expressed run counter to the dominant racial narratives promoted by progressive organizations that endorse a revisionist view of American history."

Plf's Ex. 4 (Swain Decl.) at pgs. 1 & 10-11.

Response: Defendants do not dispute that the report includes the above conclusions. Defendants do not dispute the assertions regarding Ms. Swain's qualifications. For the reasons stated in Defendants' Reply brief, Defendants object to the admissibility of Ms. Swain's testimony, and therefore dispute the statements set forth in Paragraph 20. Defendants further object that the statements in Paragraph 20 are argumentative and immaterial.

21. Plaintiff did not say that the term "White Privilege" was as offensive as the "N word." She readily acknowledged to Britton that the two terms were not equally offensive and that the one did not have the same history as the other. Ex. 26 (Britton Memo) at pgs. 3-4.

Response: Defendants dispute that Plaintiff did not say that the term "White Privilege" was as offensive as the "N word." *See* Defendants' Exhibit 15 at 4, stating "I find the term "white privilege" as racist as the "N" word." Defendants do not dispute that Plaintiff later acknowledged to Britton that the terms were not equally offensive and that the term "white privilege" did not have the same history as the "N" word.

22. Plaintiff took affirmative steps to avoid linking her Facebook page to her work. Plaintiff purposefully set her Facebook privacy settings so that her page would not be public. Only persons Plaintiff designated as her Facebook "friends" could see her page, which meant that the posts were only available to her Facebook "friends." In addition, Plaintiff believed at the time of the posts that only a handful of her Facebook "friends" would see her posts, as it was her understanding and experience that Facebook used algorithms to limit the universe of friends who saw any particular post to persons with whom she interacted regularly on Facebook. When Plaintiff logged on to Facebook, she typically saw feeds for only approximately 30 of her Facebook "friends," with the "friends" she interacted with most being at the top. Plf's Ex. 1 (Hedgepeth Decl.) at ¶3.

Response: Defendants dispute that Plaintiff took affirmative steps to avoid linking her Facebook page to her work. *See* Def. Ex. 1 at 89:9-92:5; 113:19-115:7. Defendants do not dispute that Plaintiff set her Facebook privacy settings so that her posts were only immediately visible to her Facebook "friends," but dispute that this limited Plaintiff's posts from being shared beyond her Facebook "friends" by individuals

who had access to them. Ex. 2, 40:10-43:17; Ex. 3, ¶¶ 14-15; Ex. 26, p. 1. Defendants do not dispute that Plaintiff typically saw feeds for only approximately 30 of her Facebook "friends," with the "friends" she interacted with most being at the top, or that Plaintiff may have believed that Facebook algorithms would typically show her posts to persons with whom she interacted regularly. Defendants object to Paragraph 22 as immaterial.

23. It was Plaintiffs longstanding practice to "friend" only former students who requested that she be Facebook "friends" with them. Plaintiff did not ask former students to "friend" her. She also never accepted a "friend" request from a current student or ask a current student to "friend" her. To Plaintiffs knowledge, she did not have Facebook "friends" whose siblings were students. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 4.

Response: Defendants do not dispute that Plaintiff testified that she had a longstanding practice to "friend" former students who requested that she be Facebook "friends" with them; or that she never accepted a "friend" request from a current student or ask a current student to "friend" her. Defendants dispute Plaintiff's assertion that she "did not have Facebook 'friends' whose siblings were students." Def. Ex. 1 at 91:9-21. Defendants object to Paragraph 23 as immaterial.

24. It was not at all unusual for Plaintiff to use Facebook to exchange thoughts and comments with her Facebook friends about current events, the same way neighbors or acquaintances might do when they meet on the street or as friends might do at a dinner

party. Plaintiff believes such exchanges are vital not only to hear other peoples' perspectives and learn from them, but to share her own thoughts, knowledge, and experiences and, hopefully, achieve better understanding. In both her personal life and when she was teaching social studies, Plaintiff tended to ask questions or assert alternative perspectives to draw out people and to challenge their views as well as her own, and again, hopefully, achieve better understanding. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 5.

Response: Undisputed, but Defendants object to Paragraph 24 as immaterial and argumentative.

25. The transcripts of two closed-door sessions from the meeting document Small's presentation to the board and the board's deliberations. Defs' Ex. 27 (July 16, 2020 Tr. (1st)); Plf's Ex. 11 (July 16, 2020 Tr. (2nd)).

Response: Undisputed.

26. In her twenty-five years of teaching, Plaintiff never received anything negative in her evaluations. Her evaluations were always "excellent," or, when the evaluation ratings system was changed, "proficient," including the last evaluation she received before the Covid-19 pandemic interference with the regular, two-year evaluation cycle. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 34.

Response: Defendants dispute that Plaintiff received "excellent" ratings as the record shows that Plaintiff consistently received "proficient" ratings in her summative evaluations and additionally dispute Plaintiff's assertion that she never received anything negative in her evaluations to the extent that a rating of "proficient" would be a downgrade from a rating of

"excellent." Def. Ex. 2 at 234:2-14; Def. Ex. 25 at 1. Defendants further dispute that Plaintiff never received negative evaluations as she was suspended on two occasions, in November of 2016 and March of 2019 and received a notice to remedy after the 2019 incident. See Def. Ex. 10, 11, 12, 13.

27. Small acknowledged that students believed Plaintiff's classroom was an "open environment" and "felt very comfortable" with Plaintiff as a teacher. Plf's Ex. 10 (Small Dep.) at 118:12-14.

Response: Defendants dispute that the referenced testimony says that students believed Plaintiff's classroom was an "open environment: and "felt very comfortable" with Plaintiff as a teacher, as the referenced exhibit states that Small testified that "There were some students who believed that she had an open environment and felt very comfortable with her as a teacher." (Emphasis added) Def. Ex. 16 at 118:12-14.

28. Britton made no effort to investigate how Plaintiff treated students of different races and ethnicities in her classroom. Plf's Ex. 5 (Britton Dep.) at 37:24-38:12.

Response: Disputed. Plf's Ex. 5 at 37:24-28:12.

29. Plaintiff was very involved in Palatine High School, including volunteering for a non-bullying program entitled "Palatine's Promise." She was asked by students throughout the years to be the sponsor of Gay, Straight Alliance at Palatine High School, which she did on a volunteer basis, except for one year when she received a small stipend. When it was clear that the school was in need of a greater sense of community for its increasingly diverse student body, Plaintiff

proposed implementing daily a "homeroom," which was then instituted. She was very involved in homeroom, which included a monthly video she created called "Pirates in the Hall," in which students were asked their opinions on many topics. She also was instrumental in organizing and moderating a number of all-school forums for students and staff to discuss issues of concern, including sex and gender, also on a volunteer basis. She always received a great deal of positive feedback from students and staff, both orally and in writing. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 35.

Response: Undisputed but immaterial.

30. In both 2013 and 2018, Plaintiff won the Illinois State Board of Education "Those Who Excel" award. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 35.

Response: Undisputed but immaterial.

31. In February or March of 2020, just before classes became virtual because of the Covid-19 pandemic, Plaintiff filmed, directed, edited, and narrated a "Pirates in the Hall" video about the benefits of diversity at PHS. The video was shown to the entire school during "homeroom." Plf's Ex. 1 (Hedgepeth Decl.) at ¶36.

Response: Undisputed but immaterial.

32. Plaintiff also was widely known for encouraging respect for diverse viewpoints in the classroom. She displayed a variety of images, photos, documents, and quotations in her classroom to show students that all ideas are welcome for purposes of consideration and discussion. These included pictures of Martin Luther King, Gandhi, donkeys and

elephants symbolizing the Democratic and Republic parties, student-drawn images depicting the Allegory of the Cave, the U.S. Constitution, the Declaration of Independence (to which Plaintiff referred often), African proverbs, a quote from Martin Luther King, the word "Dignity" and its definition, and the Palatine High School motto "Integrity, Respect, and Achievement." She also displayed photos of her students, many of whom came from different backgrounds and different countries, to give them a positive sense of community and belonging. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 37 & 38.

Response: Defendants do not dispute that Hedgepeth displayed a variety of images, photos, documents, and quotations in her classroom that included pictures of Martin Luther King, Gandhi, donkeys and elephants symbolizing the Democratic and Republic parties, student-drawn images depicting the Allegory of the Cave, the U.S. Constitution, the Declaration of Independence, African proverbs, a quote from Martin Luther King, the word "Dignity" and its definition, and the Palatine High School motto "Integrity, Respect, and Achievement," and that she displayed photos of her students, many of whom came from different backgrounds and different countries. Defendants dispute that the referenced exhibit demonstrates that Plaintiff "was widely known for encouraging respect for diverse viewpoints in her classroom" as that assertion is not supported by admissible evidence. *See also* Def. Ex. 35 at 2-5 (Facebook posts by former students indicating that Hedgepeth had a history of objectionable and disrespectful behavior). *See* Def. Exs. 10, 11, 12, 13, 14

and 35. Defendants further object to Paragraph 32 as immaterial and argumentative.

33. The one-day suspension Plaintiff received in 2016 arose from an effort by Plaintiff to promote and protect diverse views at PHS and, in particular, address an incident in which a student in her homeroom had been bullied for being a Trump supporter just after the 2016 presidential election. Plaintiff gave an impassioned speech that she concluded by saying, "We can't let politics divide us. We have to love each other because that's what our country needs, more love and respect." One of Plaintiffs students at the time recorded a portion of the speech because she really liked it and felt others should hear it. She then posted the recording on Facebook. The recording was subsequently used to discipline Plaintiff. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 32; Defs' Exhibit 34 (Collected Emails) at 000157-158.

Response: Defendants dispute that the one-day suspension Plaintiff received in 2016 arose from an effort by Plaintiff to promote and protect diverse views at PHS as the record indicates that Plaintiff was discussing the election results and became extremely emotionally volatile, using profanity multiple times, referring to the discussion around the election as a "lie," and telling the students that no one was going to get "fricking deported." Def. Ex. 1 at 62:6-64:21; Def. Ex. 10. Defendants do not dispute that at some point during this discussion Plaintiff said "We can't let politics divide us. We have to love each other because that's what our country needs, more love and respect" and that one of Plaintiff's students at the time

recorded a portion of the speech and posted the recording on Facebook, and that the recording was subsequently used to discipline Plaintiff for the conduct described in the disciplinary documentation. Defendants do not dispute that a student wrote to Kimberly Cavill and said that she liked what Hedgepeth was saying and thought other people should hear what she was saying.

34. Plaintiff's 2019 discipline arose from an incident in which a student made a highly inappropriate comment about not being prepared for a test. Plaintiff had never felt so disrespected in her then-nearly 25 years of teaching. She acknowledged that what she did was wrong and apologized to the class. Plf's Ex. 1 (Hedgepeth Decl.) at ¶ 33.

Response: Defendants dispute that Plaintiff's 2019 discipline arose from a student making an inappropriate comment about not being prepared for a test as Plaintiff testified that the discipline stemmed from her saying to a student who hadn't completed his homework and had questioned whether what she was teaching was going to be on the test, "you are going to sit there and berate me for not preparing you for this test and you haven't even done your fucking homework?" Def. Ex. 1 at 71:22-77:21; Def. Exs. 12, 13. The audio recording of the incident further demonstrated that Plaintiff was very emotional and was heard clearly using the phrase "read the fucking chapter" and "no shit" as Plaintiff engaged in a very heated discussion with the student. Def. Ex. 12 at 2. Defendants dispute that Plaintiff acknowledged that what she did was wrong. Def Ex. 1 at 77:10-15. Def. Ex. 12 at 1; Def. Ex. 13. Defendants do not dispute

that Plaintiff apologized to the class. Defendants further object to Paragraph 34 as immaterial.

35. The notice of charges/bill of particulars contains a single reference to "over 135" emails and phone calls received by the District and a handful of media reports. It offered no prediction of future disruption or evidence that disruption was likely if Plaintiff were to return to teach in the fall of 2020. It makes no reference to media inquiries or claims that such inquiries were disruptive. Defs' Ex. 28.

Response: Defendants do not dispute that the Notice of Charges and Bill of Particulars states that the District "received over 135 emails and phone calls expressing concern or outrage about your posts. The communications came from former students, parents, current students, and staff. Your postings also received media coverage, including on WGNTV, ABC7, NBC5, Fox 32, the New York Post and the Daily Herald." Defendants do not dispute that these matters were stated only once in the document. Defendants do not dispute that the Notice of Charges and Bill of Particulars does not use the word "disruptive" or "disruption." Defendants dispute the assertion that the Notice of Charges and Bill of Particulars did address the likelihood of future disruption if Plaintiff were not dismissed. Def. Ex. 28 at 2, ¶¶ 6, 9.

36. Media coverage of Plaintiff's posts and the reaction to the post was mostly local. The reports were brief and superficial. The matter did not receive national coverage. Coverage by the Daily Mail, a U.K.-based internet tabloid, largely rehashed the local

coverage by NBC 5. Plf's Ex. 1 (Hedgepeth Decl.) at ,r 44; Defs' Ex. 22 (News Articles).

Response: Defendants dispute that the cited exhibits demonstrate that the media coverage of Plaintiff's posts and the reaction to the post was mostly local or that the reports were brief and superficial and state that the reports speak for themselves. Def. Ex. 22. Defendants do not dispute that Plaintiff's posts did not receive "national coverage." Defendants further object to the characterization of the reports as "brief" and "superficial" and the characterization of the Daily Mail's coverage as "rehashing" local news coverage as argumentative.

37. Small's July 16, 2020 presentation to the board also contained no prediction of future disruption or evidence that future disruption was likely due to Plaintiffs speech. Defs' Ex. 27 (July 16, 2020 Tr. (1st)) at 6:19-9:5.

Response: Defendants do not dispute that Small did not use the word "disruption." Defendants dispute that Small's stated reasons for her dismissal did not include predictions of future disruption if Hedgepeth were not dismissed. Def. Ex. 27 at 8:7-11, 8:16-9:5.

38. The transcripts of the closed-door sessions of the July 16, 2020 board meeting do not show any discussion about actual or future disruption due to Plaintiffs speech. Cavill stated, "I'm not making a decision based on emails .... I'm not making that decision because I've got 100 emails in front of me." A single board member, Klimkowicz, made a passing reference to disruption but did so only after agreeing with Cavill and noting that "it was probably fortunate"

school was not in session. Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 5:1 7, 7:24-8: I, 8:23-9:4.

Response: Defendants do not dispute that, in the context of a larger exchange with another board member, Cavill said the words "I mean, I'm not making a decision based on emails" and "I'm not making that decision because I've got 100 emails in front of me. I'm making that decision based on past disciplinary actions and a failure to remediate." Pl. Ex. 11 at 4:1-8:2 Defendants admit that Klimkowicz specifically stated that she was concerned with disruption to the district and observed "I think in this case it was probably fortunate that there weren't students in the school because I'm not certain what would happen." Pl. Ex. 11 at 8:23-9:4. Defendants dispute the assertion that the closed session transcript "does not show any discussion about actual or future disruption due to Plaintiff's speech." Pl. Ex. 11 at 4:1-19, 7:20-8:2, 8:7-21, 8:23-9:4, 8:16-9:5, 12:5-13:8, 13:15-14:3.

39. The transcripts of the board's deliberations contain no reference to public comments submitted for the June 18, 2020 meeting or at the July 16, 2020 meeting. Defs' Ex. 27 (July 16, 2020 Tr. (1st)); Plf's Ex. 11 (July 16, 2020 Tr. (2nd)).

Response: Disputed. Plf's Ex. 11 at 8:12-21; Def. Ex. 27 at 8:4-6, 14:4-6 23:18-23.

40. The board's deliberations at the July 16, 2020 meeting also contain no discussion of Plaintiff's First Amendment rights or her interest in her speech. Defs' Ex. 27 (July 16, 2020 Tr. (1st)); Plf's Ex. 11 (July 16, 2020 Tr. (2nd)).

Response: Disputed. Plf's Ex. 11 at 10:17-22. Defendants further object to Paragraph 40 as immaterial.

41. Defendants admit that Plaintiffs speech caused no disruption to classroom or instructional or after-school or extra-curricular activities. Plf's Ex. 12 (Defs' Answers to Plf's 1st Set of Request for Admission to Defendant District 211) at Response to Request Nos. 5 and 6. 42. The 113 emails that comprise Defendants' Exhibit 34 actually constitute only 76 unique emails. Of these 76 emails, only 3 were from PHS students. One PHS student supported Plaintiff, and two were critical of her. Only 6 were from PHS parents. Three PHS parents supported Plaintiff, two PHS parents were critical of Plaintiff, and another PHS parent was neither supportive nor critical but simply offered a comment. Many of the other emails received by the District were based on one of two templates. Plf's Ex. 13 (Aylmer Decl.) at 114-10.

Response: Defendants do not dispute that they admitted that Plaintiff's speech did not disrupt classroom or instructional activities or after-school or extracurricular activities, insofar as school was not in session on May 31 or June 1, 2020, and Plaintiff did not return to work thereafter. Pl. Ex. 12 at 2. Defendants dispute that all of the referenced emails from PHS parents "supported" Plaintiff in their emails. *See* Def's Ex. 32 at 152. Defendants dispute that only 6 emails were from PHS parents. *See* Plf's Ex. 13 at 5 (stating that 9 emails said they were from parents). Defendants do not dispute that some of the emails received included the same language, but

dispute that "many" of the 113 emails that were received were based on the same templates, as Plaintiff's own exhibit was only able to identify 20 emails allegedly using a template. *Id.*

43. District 211 's board holds meetings at least monthly at which the public may comment. Board policy requires at least 30 minutes be set aside for public comment at board meetings, and it was not uncommon in 2020 and 2021 for the board to allow as much as 60 minutes of public comment, even if only reading comments submitted by the public in writing when meetings were held remotely. Plf's Ex 1 (Hedgepeth Decl.) at 1 39; Plf's Ex. 14 (District 211 Policy BDDH/KD); *see also* Defs Stmt., 142.

Response: Defendants do not dispute that the District's Board of Education typically meets monthly, that Board policy requires the Board to permit 30 minutes of public comment, and that the Board typically allows for up to 60 minutes of public comment in total. Defendants dispute that typical Board meetings included 60 minutes of public comment, as there were at the time typically zero to three members of the public who asked to speak at a given meeting. Def. Ex. 17, ¶ 15.

44. The public comment portion of the July 16 2020 board meeting had only four speakers who commented about Plaintiff. Two speakers were supportive, and two were critical. Thirteen members of the public addressed other topics. Plf's Ex. 1 (Hedgepeth Decl.) at 141; Plf's Ex. 17 (July 16, 2020 Board Meeting Minutes).

Response: Disputed, as the cited evidence does not support the facts asserted. See Small Decl., Def. Ex. 17, ¶ 17.

45. The overwhelming majority of persons who submitted comments to the board for the June 18, 2020 meeting were members of the public, not Palatine High School students or parents or even District 211 students or parents. Of the 76 public comments submitted for the June 18, 2020 meeting, 14 were supportive of Plaintiff, 44 were critical, and 18 did not mention Plaintiff. Only two PHS students submitted comments, both of which were critical of Plaintiff. Four other student comments did not mention Plaintiff. Only four PHS parents submitted comments. One PHS parent was supportive of Plaintiff, two PHS parents were critical, and the fourth did not mention Plaintiff. The comments also had commonalities that demonstrate a common origin or design. Plf's Ex. 13 (Aylmer Decl.) at ¶¶ 11-14.

Response: Disputed. Def. Ex. 17, ¶ 16; Def. Ex. 36.

46. Two board members, Mark Cramer and Peter Dombrowski, noted the common origin of the emails and comments. Cramer even described them as "orchestrated emails" and concluded that "the emails were part of an organized network from a community activist to discredit a teacher of over 20 years." Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 5:2-14; Plf's Ex. 15 (Dombrowsky Facebook Post, July 17, 2020).

Response: Defendants do not dispute that Mark Cramer and Peter Dombrowski noted what they characterized as the common origin of the emails and comments and that Cramer described them as "orchestrated emails" and stated that "the emails were

part of an organized network from a community activist to discredit a teacher of over 20 years." Defendants object to the assertions in Paragraph 46 as argumentative and immaterial.

47. The minutes of the District 211 board meetings from June 18, 2020 and July 16, 2020 show that the board carried on its regular business at both meetings and was not limited or prohibited from doing so in any meaningful way. Plf's Ex 1 (Hedgepeth Decl.) at, 40; Plf's Ex. 16 (Minutes of June 18, 2020 Meeting); Plf's Ex. 17 (Minutes of July 16, 2020 Meeting).

Response: Defendants dispute that the minutes of the District 211 board meetings from June 18, 2020 and July 16, 2020 show that the board carried on its regular business at both meetings and was not limited or prohibited from doing so in any meaningful way as the referenced exhibits demonstrate that Hedgepeth's posts and their effect on the community were a primary focus of two successive board meetings. Pl. Ex. 16, Pl. Ex. 17, Def. Ex. 17, ¶ 9.

48. A politically ambitious local activist, Tim McGowan, played a substantial role in coordinating opposition to Plaintiff. McGowan bragged about his involvement in a lengthy Facebook post and was interviewed by the local Fox and NBC affiliates and WGN. At least one person who submitted a comment to the District before the June 18, 2020 board meeting thanked "Mc Wagon," an alias used by McGowan, him for his efforts. McGowan met with Yung in "June or July" 2020—the same time period Plaintiffs speech was an issue before the board—to discuss McGowan's running for the school board. He also spoke with Cavill during the same time period about running for the

board. The following year, McGowan was elected to District 211 ‘s board, on which he still serves. Plf’s Ex. 1 (Hedgepeth Decl.) at ¶ 44; Plf’s Ex. 5 (Britton Dep.) at 72:1-12; 73:6-17, 82:12-83:1; Plf’s Ex. 8 (Yung Dep., at 8:2-19); Plf’s Ex. 9 (Cavill Dep.) at 10:1-19; 11:7-9; Plf’s Ex. 21 (McGowan Dep.) at 22:20-23: 13, 94:6-98:3; Plf’s Ex. 22 (McGowan Facebook Video Tr.); Defs’ Ex. 36 (Collected Comments) at 000587-588.

Response: Defendants dispute the assertion that Tim McGowan was a politically ambitious local activist who “bragged” about his involvement in coordinating opposition to Plaintiff as as this assertion is unsupported by the referenced exhibits. *See* Plf’s Exs. 21, 22. Defendants deny that Tim McGowan played a “substantial” role in coordinating opposition to Plaintiff as demonstrated by the uncoordinated posts of students and community members on Facebook and in messages directed to the Board. Def. Exs. 35 and 36; Def. Ex. 16 at 16:7-17, 178:17-179:20. Defendants dispute the characterization of one individual “thanking” McGowan “for his efforts” in coordinating opposition to Plaintiff as the referenced exhibit thanks “McWagon” for “bringing this to our attention and speaking up” in reference to a “hidden culture” at Palatine and not the removal of Hedgepeth. Def. Ex. 36 at 587-588. Defendants do not dispute that McGowan met with Yung and Cavill in “June or July” 2020 but dispute the inference that because this was the same time period Plaintiffs speech was an issue before the board the meeting is somehow related to the instant matter. Defendants do not dispute that McGowan spoke with Cavill during the same time period about running for the board. Defendants do not dispute that McGowan was elected to District 211’s

board, on which he still serves. Defendants object to the statements in this paragraph as argumentative and immaterial.

49. In recommending Plaintiffs termination, Small credited the views of persons who considered Plaintiff and her speech to be racist. Small did so without regard to whether those persons were parents, students, or members of the general public. Plf's Ex. 10 (Small Dep.) at 188:6-8 &18-19; 190:2; 201:2-6; Defs' Ex. 27 (July 16, 2020 Tr. (1st) at 8:5-6.

Response: Defendants do not dispute that in recommending Plaintiff's termination, Small considered the views of persons who considered Plaintiff and her speech to be racist. Defendants dispute that the referenced exhibit shows that Small did so without regard to whether those persons were parents, students, or members of the general public as it does not reference the weight Small placed on comments from parents, students, or members of the general public and instead demonstrates that Small was concerned with both the impact of Hedgepeth's posts on the students at Palatine High School as well as the perception of the District within the community as a whole. See Def. Ex. 16 at 188:6-8 & 18-19; 190:2; 190:22-198:19; 201:2-6; Def. Ex. 17 at 3, ¶ 10 Defendants object to the assertions of Paragraph 49 as argumentative.

50. Small would not have been concerned about Plaintiffs speech had it not been made public. Plf's Ex. 10 (Small Dep.) at 114:12-22, 119:4-16, 140:9-18, 176:7-15, 199:22-200:1, 201:6-9.

Response: Defendants dispute that the cited evidence shows that Small would not have been

concerned about Plaintiff's speech had it not been made public. Def. Ex. 16 at 114:12-22, 201:7-9.

51. The only identifiable communication from a teacher in Defendants' evidence was from a PHS teacher who supported Plaintiff, a fact Defendants ignore. Defs' Exhibit 34 (Collected Emails) at 000097.

Response: Defendants do not dispute that the only written communication submitted to the District by a PHS teacher regarding Plaintiff's posts was supportive of Plaintiff. Defendants dispute that this was the only communication that the District received from teachers regarding Plaintiff's posts. Def. Ex. 32, ¶ 3. Defendants further object to Paragraph 51 as immaterial and argumentative.

52. Defendants had similar reactions to Plaintiff and her speech. Small was "appalled" by the speech. She also said of Plaintiff and Plaintiffs speech, "[H]er biases of racism are definitely showing." Britton described Plaintiff's speech as biased against Black Americans. His reaction to Plaintiffs speech was so extreme that it is fair to conclude he strongly disagreed with the speech. Cavill dismissed Plaintiffs exchange with Ms. Harris as "traffic[king] in racial stereotypes and racial tropes ... this is a really good example of ... dogwhistle language, where on the surface there is plausible deniability and the general understanding is that is a racist conclusion." Yung dismissed Plaintiff as a racist. Klimkowicz said she thought Plaintiff's exchange with Ms. Harris could be considered racist but did not affirmatively state that she viewed it that way. Defs' Ex. 2 (ISBE Hearing Tr.) at 61: 15-62:2, 141 :6-21; Plf's Ex. 5 (Britton Dep.) at 51:9-13; 103:22-104: 10; 226: 19-227:8; 227:14-228: 17;

Plf's Ex. 6 (Klimkowicz Dep.) at 79:24-80:3; Plf's Ex. 9 (Cavill Dep.) at 81:4-5 & 11-14, 82:12-16; Plf's Ex. 10 (Small Dep.) at 200:12-13; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 6:12.

Response: Defendants do not dispute the statements of Small, Cavill, Yung, or Klimkowicz set forth in Paragraph 52. Defendants object to Paragraph 52 as immaterial. Defendants dispute that Britton's reaction to Plaintiff's speech was extreme or that it is fair to conclude that he strongly disagreed with the speech. Def. Ex. 2 at 61:23-62:8. Defendants dispute the characterization of Cavill as "dismissing" Plaintiff's exchange with Ms. Harris. Plf's Ex. 9 at 81, 82.

53. Cavill, who was the most vocal of the board members who voted to terminate Plaintiff, seemed particularly hostile to conservative views such as Plaintiff's. In August 2020, less than six weeks after voting to fire Plaintiff for controversial social media posts, Cavill tweeted about the upcoming 2020 presidential election that "America was in the process of choosing whether to be a white nationalist fascist state or an inclusive democracy." Later in November 2020 she tweeted the following in response to a speech by conservative U.S. Supreme Court Justice Samuel Alito about a decision in an abortion case: "Roses are red, violets are blue, Plan B prevents ovulation, so screw you." Plf's Ex. 9 (Cavil Dep.) at 153:1-13; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)).

Response: Defendants do not dispute the text of Cavill's tweets. Defendants dispute the remaining assertions in Paragraph 53 as unsupported by the referenced evidence or that Plaintiff voted to fire

Plaintiff because she was hostile to conservative views such as Plaintiff's. Plf's Ex. 9 at 153:1-13; Plf's Ex. 11 at 4:2 – 19; Def. Ex. 27 at 7:20-24. Defendants further object to Paragraph 53 as argumentative and immaterial.

54. Defendants misinterpreted Plaintiffs Civil War post and either disagreed with or rejected it. Britton found it inflammatory and concluded it referred to the Black Lives Matter movement, which on its face it did not. Small asserted that it demonstrated Plaintiff did not want to live in Palatine, which bore negatively on the District. "If she doesn't want to be in the area that she teaches, that's a problem." "She says she doesn't want to go home ... Maybe the civil war doesn't exist in Florida." Klimkowicz found Plaintiffs civil war reference "offensive" because "I think the term 'war' is - is -you know, people are getting hurt." Cavill found it "implies desire or a willingness to participate in this perceived 'civil war,'" twisting Plaintiffs expression of concern far beyond anything her actual speech. Plf's Ex. 5 (Britton Dep.) at 51 :9-13; 103:22-104:10; Plf's Ex. 6 (Klimkowicz Dep.) at 57:18-58:1; Plf's Ex. 9 (Cavill Dep.) at 38:22-23; Plf's Ex. 10 (Small Dep.) at 75:2-3, 84:13-19.

Response: Defendants do not dispute the substance of the statements set forth in Paragraph 54 or that Defendants disagreed with or rejected Plaintiff's Civil War post. Defendants dispute that the referenced exhibits support the assertion that there is a "correct" interpretation of the posts or that the referenced exhibits demonstrate that they misinterpreted Plaintiff's post. Def. Exs. 30 at 29, 34, 35, 36;

Defendants further object to Paragraph 54 as argumentative and immaterial.

55. Like the "Civil War" post, Defendants misinterpreted the "Wanna Stop the Riots" and reacted to it very negatively. Britton mistook the speech as being literal and even expanded upon it, falsely claiming that Plaintiff advocated spraying PHS students with urine and feces despite the post's express reference to riots and the complete lack of any mention of PHS. Small also took the post literally, asserting that "[t]he school does not believe in using fecal matter to spray on human beings no matter what the situation is" and "[t]hat is certainly not how we react or want to react as we look at people who are not following the law." Lefevre did likewise, "I mean, it's essentially suggest[s] assaulting 'em."' Rosenblum declared the speech "obscene." Yung dismissed it as racist. Klimkowicz testified that "given what was happening at this time, I did not find this appropriate." Plf's Ex. 5 (Britton Dep.) at 226:7-227:8; 227:14-228:17; Plf's Ex. 6 (Klimkowicz Dep.) at 67:24-68:1; Plf's Ex. 7 (Rosenblum Dep.) at 23:7-9; Plf;s Ex. 10 (Small Dep.) at 104:6-8; Plf's Ex. 11 (July 16, 2020 Tr. (2nd)) at 6:11-22; Plf's Ex. 19 (Lefevre Dep.) at 35:19-20; Defs' Ex. 2 (ISBE Hearing Tr.) at 174:5-10, 178:19-20.

Response: Defendants do not dispute the substance of the statements set forth in Paragraph 55 or that Defendants reacted very negatively to the "Wanna Stop the Riots" post. Defendants dispute that the referenced exhibits demonstrate that they misinterpreted Plaintiff's post. Defendants dispute that the referenced exhibits support the assertion that

there is a "correct" interpretation of the posts or that the referenced exhibits demonstrate that they misinterpreted Plaintiff's post. Def. Exs. 30 at 29, 34, 35, 36. Defendants further object to Paragraph 55 as argumentative and immaterial.

56. On November 10, 2022, the board approved a resolution adopting the Illinois State Board of Education hearing examiner's October 26, 2022 findings and recommendation without discussion or debate. Plf's Ex. 18 (November 10, 2020 Tr.).

Response: Defendants do not dispute that the Board did not engage in discussion or debate regarding the resolution to adopt the Illinois State Board of Education Hearing Officer's findings and recommendation to dismiss Hedgepeth in open session at the November 10, 2020 board meeting. Defendants dispute that the transcript reflects conversations occurring in closed session during the meeting. Defendants object to Paragraph 56 as immaterial.

57. District 211 serves a community of over 250,000 persons and operates five high schools and two alternative high schools. When Plaintiff was teaching at PHS, District 211 had approximately 1,400 employees. PHS had approximately 180 teachers and 2,500 students. Plf's Ex. 1 (Hedgepeth Decl.) at ¶2.

Response: Undisputed.

Respectfully submitted,

* * *

Appendix F

RELEVANT CONSTITUTIONAL PROVISION

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.