

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SHARON A. LUCERO, )  
)  
Plaintiff, )  
vs. ) NO. 1:05-cv-00266-RLY-JMS  
)  
NETTLE CREEK SCHOOL CORPORATION, )  
JOSEPH BACKMEYER, )  
BOARD OF SCHOOL TRUSTEES OF THE )  
NETTLE CREEK SCHOOL CORPORATION, )  
PAUL WEISS, )  
THOMAS GORDON, )  
THOMAS KOONTZ, )  
MICHAEL CUNNINGHAM, )  
JAMES LEWIS, )  
DAN DAVIS, )  
CARY RHOADES, )  
MARK CHILDS, )  
JOHN DOE, )  
JANE DOE, )  
WILLIAM BUNGER, )  
)  
Defendants. )

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

SHARON A. LUCERO,  
Plaintiff,

vs.

1:05-cv-0266-RLY-WTL

NETTLE CREEK SCHOOL CORPORATION; )  
JOSEPH BACKMEYER, in his individual and )  
official capacities; BOARD OF SCHOOL )  
TRUSTEES OF THE NETTLE CREEK )  
SCHOOL CORPORATION; PAUL WEISS, in )  
his individual and official capacities; THOMAS )  
GORDON, THOMAS KOONTZ, MICHAEL )  
CUNNINGHAM, JAMES LEWIS, DAN )  
DAVIS, and CARY RHOADES, in their )  
individual capacities; MARK CHILDS, in his )  
individual and official capacities; and )  
WILLIAM BUNGER, JOHN DOE and JANE )  
DOE, in their individual capacities )  
Defendants. )

**ENTRY ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Sharon Lucero (“Plaintiff”), is employed by the Nettle Creek School Corporation (the “School Corporation”) as a teacher in the English Department at the Hagerstown Junior-Senior High School (“Junior-Senior High School”). During school year 2003-04, Plaintiff taught English 12 and Senior Honors/AP English (“Honors English”) (collectively “Senior English”). During the Summer of 2004, Plaintiff learned that her teaching assignment had changed, and that she would be teaching seventh grade English, as she had before her assignment to the high school level. Following her reassignment, Plaintiff filed several charges of discrimination. This lawsuit followed. In her Amended Complaint, Plaintiff

brings eleven separate claims, alleging, *inter alia*, violations of her civil rights. Defendants now move for summary judgment on all of Plaintiff's claims. For the reasons set forth below, the court **GRANTS** Defendants' Motion.

**I. Factual Background**

**A. General Background Information**

1. Junior-Senior High School is an Indiana Public School that is part of the School Corporation, and is located in Hagerstown, Indiana. (Deposition of Mark Childs ("Childs Dep.") at 6).
2. The Junior-Senior High School serves students in grades 7 through 12 in the same building. (Deposition of Sharon Lucero ("Plaintiff Dep.") at 49).
3. The School Corporation is governed by a seven-member Board of School Trustees (the "Board"), including defendants, Paul Weiss ("Weiss"), Thomas Gordon, Michael Cunningham, James Lewis, Dan Davis, and Cary Rhoades. (Amended Complaint ¶¶ 9, 11).
4. Mr. Weiss is the current President of the Board. (Amended Complaint ¶ 9).
5. The School Corporation's administrators make hiring recommendations for teaching staff to the Board, and the Board has the ultimate responsibility to approve all teacher contracts. (Deposition of Michael Cunningham ("Cunningham Dep.") at 57; Deposition of Dan Davis ("Davis Dep.") at 55-57).
6. Joe Backmeyer ("Mr. Backmeyer") is the Superintendent of the School Corporation. (Amended Complaint ¶ 7(C)).
7. Mark Childs ("Mr. Childs") is the Principal of the Junior-Senior High School. (Amended Complaint ¶ 12). In his capacity as Principal, Mr. Childs makes teaching assignments

- and directs the work of teachers at the Junior-Senior High School. (Childs Dep. at 60).
8. Bill Bunger (“Mr. Bunger”) is the Assistant Principal of the Junior-Senior High School. (Plaintiff Dep. at 50).
  9. Plaintiff, a female of Hispanic national origin, is employed by the School Corporation as a teacher in the English Department at the Junior-Senior High School and is certified to teach English to students in grades 6 through 12. (Amended Complaint ¶¶ 6(C), (G)).
  10. Plaintiff is a member of and is represented by the Nettle Creek Classroom Teachers Association (the “NCCTA”), which is affiliated with the Indiana State Teachers Association (the “ISTA”). (Amended Complaint ¶ 33).
  11. A collectively bargained agreement between the NCCTA and the Board was in effect from August 15, 2002, through August 14, 2004 (the “CBA”) and governs the terms and conditions of Plaintiff’s employment. (Amended Complaint ¶ 34; Amended Complaint Ex. 3).
  12. The CBA remained in effect for the school year 2004-05 without a gap in coverage pursuant to the principle of “status quo.” (Amended Complaint ¶ 35; Amended Complaint Ex. 3).
  13. The School Corporation has a Just Cause and Appeal Policy (the “Just Cause Policy”), which was adopted by the Board on March 23, 1983, and amended by the Board on March 22, 2000, that prohibits the School Corporation from reprimanding, suspending, or terminating a teacher without just cause. (Amended Complaint ¶ 36; Amended Complaint Ex. 1).

**B. Plaintiff’s Employment at Nettle Creek in 2001-02 and 2002-03**

14. In 2001, Plaintiff applied for an English teacher position at the Junior-Senior High

School. (Childs Dep. at 49).

15. During the interview process, Mr. Childs informed Plaintiff that the Junior-Senior High School is a seventh through twelfth grade school and that she could be assigned to teach English in any of those grades. (Plaintiff Dep. at 53) (Q: “So you are aware, then, that you could be assigned to teach any grade seventh through twelfth?” A: “Yes, I am.”).
16. In 2001, Mr. Childs recommended to the Board that Plaintiff be hired as a teacher at the Junior-Senior High School, which recommendation was approved by the Board. (Childs Dep. at 49-50; Plaintiff Dep. at 53-54).
17. In August 2001, Plaintiff entered into a written teacher’s contract with the School Corporation for the 2001-02 school year. (Amended Complaint ¶ 15; Plaintiff Dep. Ex. 4).
18. During the 2001-02 school year, Mr. Childs assigned Plaintiff to teach seventh grade English classes, Journalism Yearbook, and Newspaper. (Amended Complaint ¶ 16).
19. Mr. Childs gave Plaintiff an overall positive performance review during the 2001-02 school year. (Plaintiff Dep. at 67-69; Plaintiff Dep. Ex. 6).
20. Plaintiff’s teaching contract was renewed by the School Corporation for the 2002-03 school year. (Amended Complaint ¶ 17).
21. During the 2002-03 school year, Mr. Childs assigned Plaintiff to teach eighth grade English classes, Journalism Yearbook, and Newspaper. (Amended Complaint ¶ 18).
22. Plaintiff’s performance evaluations for the 2002-03 school year were positive overall. (Plaintiff Dep. at 65-66, 72-73; Plaintiff Dep. Exs. 5, 8).

**C. Plaintiff’s Employment at Nettle Creek During the 2003-04 School Year**

23. Plaintiff’s teaching contract was renewed by the School Corporation for the 2003-04

- school year. (Amended Complaint ¶ 22; Amended Complaint Ex. 4).
24. That year, the Junior-Senior High School was offering for the first time an Honors English class to Seniors. (Amended Complaint ¶ 26).
  25. Plaintiff made a request to Mr. Childs that she be reassigned to teach English 12 and Honors English for the 2003-04 school year. (Plaintiff Dep. at 79-80).
  26. Mr. Childs granted Plaintiff's request. Thus, for the 2003-04 school year, Plaintiff taught English 12, Honors English, Journalism Yearbook, and Newspaper. (Amended Complaint ¶ 23; Plaintiff Dep. at 79).
  27. In the Summer of 2003, in anticipation of her teaching Honors English, Plaintiff enrolled and attended a three-day workshop at Ball State University. (Plaintiff's Ex. 135). In addition, Plaintiff attended a "High Schools that Work" program in Nashville, Tennessee, which included a workshop that provided information regarding "Senior Portfolio Projects." (Plaintiff's Ex. 228 at 30).

### **1. The Teacher Visitation Report**

28. In November 2003, Mr. Childs observed and evaluated Plaintiff's teaching performance, filled out a "Teacher Visitation Report" (the "Report") and met with Plaintiff to discuss the same. (Plaintiff Dep. at 140-41; Plaintiff Dep. Ex. 11). In the Report, Mr. Childs noted that Plaintiff did not use her classroom time efficiently. He also noted that Plaintiff spent an inordinate amount of time answering a student's question that Plaintiff share something deep about herself. Rather than ask the student a follow-up question to more precisely pinpoint the focus of her question, Plaintiff spoke for ten minutes about an incident in 1994 in which she and her husband were stopped by a policeman due, in her opinion, to the fact that she and her husband looked "Mexican." She stated, "What was

that all about? To us it was about discrimination? [sic] But it could have been due to us having Texas plates, and state road 70 being a drug pipeline. . . The cop viewed it one way and we viewed it another.” (Plaintiff Dep. Ex. 11).

29. During that meeting, Plaintiff informed Mr. Childs that two male students made inappropriate remarks to her, including “Dirty Mexican” and “Is this how they do it in Mexico?” (Plaintiff Dep. at 144).
30. Although Plaintiff did not believe that Mr. Childs adequately “address[ed] the issue,” Plaintiff did not fill out a disciplinary referral form, and “handled [the situation] within the classroom.” (Plaintiff Dep. at 145).

## **2. Complaints With Respect to Plaintiff’s Teaching Assignments**

31. In December 2003, members of Plaintiff’s Honors English class met with Mr. Childs to complain about an assignment. (Childs Dep. at 132-33). The students explained that Plaintiff assigned a paper and required the students to complete it in a short period of time in the midst of several semester exams. (Childs Dep. at 133).
32. In response to the students’ complaints, Mr. Childs defended Plaintiff by telling the students that if they prioritized and made efficient use of their time, they would be able to complete the assignment. (Childs Dep. at 134).
33. In April or May 2004, a parent of a student in Plaintiff’s Honors English class complained to Mr. Childs about the number of points Plaintiff was attributing to a portfolio project. (Plaintiff Dep. at 291; Plaintiff Dep. Ex. 17). Mr. Childs suggested that the parent contact Plaintiff directly to try to resolve the parent’s complaint. (Childs Dep. at 131; Plaintiff Dep. at 292; Plaintiff Dep. Ex. 17).
34. Plaintiff and the parent spoke and were unable to reach a resolution to the parent’s

concerns. According to Plaintiff, she and the parent “agreed to disagree.” (Plaintiff Dep. at 297).

35. In the Spring of 2004, an entire class of students (which class is not stated) met with Plaintiff and complained, *inter alia*, that her instructions were unclear. Plaintiff denied the complaint and told the students she gave them clear instructions. (Plaintiff Dep. at 323, 325).
36. In May 2004, some of Plaintiff’s students and their parents voiced concerns to Mr. Childs regarding Plaintiff’s teaching practices. (Childs Dep. at 78-79).

### **3. The Fisher-Brockman, Cell Phone, and Computer Lab Incidents**

37. On May 6, 2004, during Plaintiff’s English 12 class, student Jacob Brockman (“Brockman”) held up a photograph of fellow student Garrett Fisher’s (“Fisher”) naked buttocks (the “Fisher-Brockman incident”) to the class. (Amended Complaint ¶ 46(A); Amended Complaint Ex. 5).
38. Plaintiff wrote a referral regarding the Fisher-Brockman incident to Mr. Bunker on Thursday, May 6, 2004, and discussed the referral with Mr. Bunker on Friday, May 7, 2004. (Plaintiff Dep. at 380-82; Plaintiff Dep. Ex. 24). Plaintiff told Mr. Bunker she would try to handle the matter on her own, but if she should decide she was uncomfortable, she asked if she could turn the referral form into him. Mr. Bunker responded, “Yes, put them in my mailbox.” (Plaintiff Dep. at 387-88).
39. On Monday, May 10, 2004, Plaintiff notified Mr. Bunker that she wanted him to handle the Fisher-Brockman incident. (Plaintiff Dep. Ex. 25). Mr. Bunker told Plaintiff he would investigate her referral after he completed some expulsion matters. (Plaintiff Dep. at 395).

40. On Thursday, May 13, 2004, Mr. Childs told Plaintiff he had received an email alleging she had allowed a cell phone with a picture of a penis to be passed around her classroom. Plaintiff denied the accusation, and nothing ever came of the incident. (Plaintiff's Ex. 228(A) at 48).
41. That same day, Plaintiff sent an email to Mr. Bungler, stating that she "would really like the [Fisher-Brockman incident] taken care of as soon as possible," particularly in light of the cell phone incident above. She expressed concern that if something was not done soon, "those seniors will think that they can get away with anything . . ." (Plaintiff's Ex. 25).
42. That same day, Plaintiff also sent an email to Mr. Childs, complaining that the Fisher-Brockman incident had not been addressed, that the credibility of the School Corporation's policies were at risk, and that the School Corporation was not supporting her efforts at maintaining a classroom environment conducive to learning. (Plaintiff Dep. Ex. 25).
43. Plaintiff sent a follow-up email to Mr. Childs approximately thirty minutes later again complaining about the "lack of enforcement of school policy" regarding the Fisher-Brockman incident and stated that she "wish[ed] to avoid being accused of allowing sexual harassment to fester in [her] classroom as well." (Plaintiff Dep. Ex. 25).
44. On Monday, May 17, 2004, Fisher walked into the computer lab (where Plaintiff was holding class) and informed a friend that Plaintiff had turned him in for his role in the Fisher-Brockman incident (the "computer lab incident"). (Plaintiff Dep. at 406).
45. Plaintiff overheard Fisher's conversation. After Plaintiff asked him to leave her classroom three times, Fisher said, "I'm leaving." The entire incident lasted

- approximately thirty seconds. (Plaintiff Dep. at 406-07).
46. Plaintiff referred Fisher to Mr. Bunger's office for discipline. (Plaintiff Dep. at 407; Plaintiff Dep. Ex. 27).
  47. On Tuesday, May 18, 2004, Mr. Bunger notified Plaintiff by email that students "X" and "Y" (Brockman and Fisher) were suspended from school for two days for their involvement in the Fisher-Brockman incident. (Plaintiff Dep. at 397; Plaintiff Dep. Ex. 26).
  48. On May 25, 2004 (the last day before the end of the school year for the Seniors), Plaintiff emailed Mr. Childs and Mr. Bunger, informing them that Fisher asked her toward the end of the class period, "How come you turned in my photo? . . . It was no big deal." Plaintiff then expressed frustration at what she perceived as the administration's failure to view the Fisher-Brockman incident and the computer lab incident as more than mere childish pranks. At the end of the email, Plaintiff stated, "I consider what Garrett Fisher did to me in the computer lab harassing. It is harassment. . . This is a complaint I am submitting to the office and there is only one day left in school to handle it." (Plaintiff Dep. Ex. 28).
  49. Several days later, Mr. Bunger informed Plaintiff that he counseled Fisher in response to her complaint. (Plaintiff Dep. at 414).

#### **4. The Playboy Magazine Incident**

50. On Wednesday, May 19, 2004, three students played a Senior prank on Plaintiff by placing 20 Playboy magazines in her classroom (the "Playboy magazine incident"). (Amended Complaint ¶ 46(F); Amended Complaint Ex. 14; Plaintiff Dep. at 423; Plaintiff's Exs. 43-55).

51. Plaintiff spoke to Mr. Bunger about the incident. (Plaintiff Dep. at 420-22).
52. Following the Playboy magazine incident, Plaintiff emailed Mr. Backmeyer, Mr. Childs, Mr. Bunger, and NCCTA President Deborah Brogan (“Ms. Brogan”), noting that she considered the prank to be “harassment of a teacher.” She stated that “pranks are common, but the types of issues that are surfacing condone a negative and hostile environment for women.” (Plaintiff’s Ex. 31).
53. That same day, Mr. Bunger informed Plaintiff that the three students involved in the Playboy magazine incident received out-of-school suspensions. (Plaintiff Dep. at 430).
54. The students involved in the Playboy magazine incident apologized to Plaintiff and told her they did not mean to hurt her. They only played the prank on her because she had been absent from work the day before and “they couldn’t resist.” (Plaintiff Dep. at 433-434).

**D. June 2004 Meetings**

55. During the last week of the Spring semester, Mr. Childs informed Plaintiff that he was not sure she had the personality to teach Senior English and he was considering reassigning her. (Plaintiff Dep. at 480-81).
56. On June 4, 7, and 9, 2004, Mr. Childs, Ms. Brogan, Plaintiff, and English Department Chairperson Kent Gray (“Mr. Gray”) participated in a series of meetings regarding Plaintiff’s next teaching assignment. (Plaintiff Dep. at 482, 493-94).
57. During the June 2004 meetings, Mr. Childs informed Plaintiff that her pacing in Senior English was problematic and that he had received several complaints from parents and students about the problems in her classroom during the 2003-04 school year. (Plaintiff Dep. at 482-83, 497; Deposition of Deborah Brogan (“Brogan Dep.”) at 107).

58. Mr. Childs also told Plaintiff that her personality and teaching style were not conducive to teaching Seniors, and that she was better suited to teach Junior High students. (Plaintiff Dep. at 486-87, 495; Brogan Dep. at 111, 124).
59. Plaintiff responded that Mr. Childs was moving her because she asked him “to do something about” the Fisher-Brockman and Playboy magazine incidents. (Plaintiff Dep. at 489).
60. Plaintiff also asked whether bias may be a factor, and reminded him of the derogatory remarks made by two of her students, including “Dirty Mexican.” Mr. Childs did not respond to her inquiry. (Plaintiff’s Ex. 231 at 36, ¶ 2).
61. Mr. Childs told Plaintiff that he would not reassign her from English 12 and Honors English unless he could find someone who had Advanced Placement training or was otherwise more qualified to teach those classes. (Brogan Dep. at 135; Childs Dep. at 251-52).
62. Ms. Brogan told Mr. Childs that if he did not assign Plaintiff to continue to teach Senior English and Senior Honors English, that the NCCTA and Plaintiff would consider this a “reprimand.” (Plaintiff Dep. at 495).
63. The CBA provides that “[r]eassignment and/or transfer of an employee shall be made on the basis of qualifications.” (Amended Complaint ¶ 34; Amended Complaint Ex. 3 at Art. IX(c)).

**E. Mr. Childs Interviews Candidates for an English Teaching Position**

64. At the end of the 2003-04 school year, Mr. Backmeyer posted a position for an English teacher for grades 7 through 12. (Childs Dep. at 88).
65. Mr. Childs interviewed Aaron Chester (“Mr. Chester”), a white male, for the position.

(Childs Dep. at 89).

66. At that time, Mr. Chester had never taught a Senior English course, and had no experience teaching Honors courses. (Chester Dep. at 47; Plaintiff's Ex. 223 at 311).
67. On June 30, 2004, Mr. Childs and Mr. Backmeyer decided that they wanted to hire Mr. Chester as an English teacher at the Junior-Senior High School because: (a) he had four years of teaching high school-aged students in other Indiana high schools and had established a good rapport with those students; (b) he had positive employment references from two other school corporations; (c) he had a passion for British literature; (d) he had a pleasant, courteous, calm, and confident personality; and (e) he was technologically savvy in the classroom. (Childs Dep. at 93-97, 101-02, 113-14; Backmeyer Dep. at 266-67, 292-94).
68. On July 14, 2004, Mr. Backmeyer recommended to the Board that it hire Mr. Chester as an English teacher, which recommendation was approved by the Board. (Amended Complaint ¶ 55).
69. On that same date, the Board renewed Plaintiff's teaching contract for the 2004-05 school year. (Plaintiff Dep. Ex. 33).
70. On July 28, 2004, Mr. Childs informed Plaintiff in writing that he had decided to assign Plaintiff to teach seventh grade English and that Mr. Chester would be teaching English 12 and Honors English for the 2004-05 school year. (Plaintiff Dep. Ex. 32).
71. Plaintiff did not lose any pay or benefits as a result of her reassignment to teach seventh grade English. (Plaintiff Dep. Exs. 9, 33; Amended Complaint ¶ 34; Amended Complaint Ex. 3 at Art. IX(c)).

#### **F. Plaintiffs Files Her First Charge of Discrimination**

72. On July 29, 2004, Plaintiff filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging gender and national origin discrimination and retaliation. (Amended Complaint ¶ 59; Plaintiff Dep. Ex. 54).
73. Plaintiff claimed that she was reassigned from English 12 to English 7 because of her sex and in retaliation for complaining about the alleged hostile work environment created by the students in her Senior English classes. (Plaintiff Dep. Ex. 34).
74. On October 27, 2004, the EEOC issued a notice of dismissal of Plaintiff’s charge of discrimination. (Plaintiff Dep. Ex. 35).

**G. Plaintiff Appeals Pursuant to the Just Cause Policy**

75. On August 4, 2004, Plaintiff, in conjunction with the NCCTA, filed an appeal under the Policy alleging that Plaintiff’s reassignment was a reprimand that was issued without just cause. Plaintiff sought reinstatement to English 12 and Honors English. (Amended Complaint ¶ 60; Plaintiff Dep. Exs. 39, 41).
76. In preparation for the anticipated litigation, Mr. Backmeyer contacted parents of some of the students in Plaintiff’s Senior English classes and asked them if they would memorialize any concerns they might have had about their child’s experience in Plaintiff’s Senior classes. (Backmeyer Dep. at 354, 384).
77. Several parents and students wrote complaints about Plaintiff and sent them to Mr. Backmeyer. (Bunger Dep. Ex. 36).
78. On November 5, 2004, Plaintiff’s appeal went to an arbitration hearing. (Plaintiff’s Ex. 142). The arbitrator dismissed Plaintiff’s appeal on the basis that her teaching reassignment was not a reprimand and was therefore not arbitrable under the Policy. (Plaintiff’s Ex. 142 at 118-122; Amended Complaint ¶¶ 71-72).

#### **H. The Board Repeals the Policy**

79. On November 10, 2004, Mr. Backmeyer recommended to the Board that it repeal the Policy because, *inter alia*, he felt the NCCTA had misused the Policy. (Backmeyer Dep. at 194-96).
80. Prior to making his recommendation, Mr. Backmeyer discussed the matter with the NCCTA Discussion Team, as required by Article VII of the CBA. (*See* Plaintiff's Ex. 130).
81. That same day (November 10, 2004), the Board repealed the Policy. (Plaintiff's Ex. 130 at NC Fed 0416, ¶ 7; Amended Complaint ¶¶ 73, 76).

#### **I. Plaintiff Files a Second EEOC Charge Alleging Retaliation**

82. On September 15, 2004, Plaintiff filed a second charge of discrimination with the EEOC alleging the School Corporation retaliated against her because Mr. Childs met with her to discuss her tardiness to a meeting and warned her that future attendance issues could result in discipline. (Plaintiff Dep. Ex. 36).
83. On October 27, 2004, the EEOC issued a notice of dismissal of Plaintiff's second charge. (Plaintiff Dep. Ex. 38).

#### **J. The Yearbook Debt**

84. In December 2004, Plaintiff received a "Summative Evaluation Form" (the "Evaluation") from Mr. Childs. In that document, Mr. Childs noted that Plaintiff had made progress in many areas, including her use of instructional time and her ability to motivate her students. (Plaintiff's Ex. 77 at NC 0002).
85. In the Evaluation, Mr. Childs informed Plaintiff that he had received a call from the Yearbook's publisher, Hereff Jones, informing him that Herff Jones had not received

sufficient funds from the Junior-Senior High School to publish and send the 2003-04 Yearbook. (Plaintiff's Ex. 77 at NC 0004). Mr. Childs informed Plaintiff that she needed to make progress to reduce the debt. "Failure to make progress in this area will result in the need to establish a target for you." (Plaintiff's Ex. 77 at NC0004).

86. Plaintiff and her husband voluntarily contributed money toward the Yearbook to help reduce the debt. (Declaration of Sharon Ann Lucero ("Lucero Dec.") ¶ 59).

**K. Plaintiff Applies for Chairperson of the English Department**

87. On May 17, 2005, Mr. Gray resigned as Chairperson of the English Department. (Plaintiff's Ex. 114 at NC Fed 0460).
88. Plaintiff took an immediate interest in the position; accordingly, she asked Mr. Childs for the qualifications for the position, a copy of the job description, and requested an application. (Plaintiff's Ex. 114 at NC Fed 0458, 0461).
89. Mr. Childs informed her that there was no formal vacancy at that time. (Plaintiff's Ex. 114 at NC Fed 0458).
90. On May 26, 2005, Mr. Childs informed Plaintiff that Mr. Gray's position was vacant. (Tab 114 at NC Fed 0462).
91. On June 15, 2005, Dan Diercks ("Mr. Diercks"), a grade school English teacher, sent Mr. Childs an email informing him of his interest in the position. (Tab 114 at NC Fed 0467).
92. Soon thereafter, Mr. Childs forwarded Mr. Dierck's email to Mr. Backmeyer, and said, "Joe, If this gets the job done let me know and my recommendation will follow." (Plaintiff's Ex. 114 at NC Fed 0467).
93. On June 23, 2005, Mr. Childs sent a memo to Mr. Backmeyer indicating that three individuals had applied for the position of English Department Chair, and that he

recommended the position be filled by Mr. Diercks. (Plaintiff's Ex. 114 at NC Fed 0469).

**L. Mr. Chester's Questionnaire**

94. In May 2005, Mr. Chester filled out a "Confidential Certified Teacher Intent Questionnaire" ("Questionnaire"), indicating that he had a Bachelors Degree plus 15 hours towards his Masters Degree. (Plaintiff's Ex. 162 at 8).
95. The following year, Mr. Chester filled out the Questionnaire, again indicating that he had 15 hours of Masters-level credit. (Plaintiff's Ex. 162 at 9).
96. Based upon the answers above, Mr. Chester received a higher salary. (Plaintiff's Ex. 223 at 380).
97. In fact, Mr. Chester did not have 15 hours toward his Masters Degree. (Plaintiff's Ex. 223 at 363, 380).
98. When the School Corporation discovered the discrepancy, it determined, after speaking to Mr. Chester, that Mr. Chester had made an honest mistake and corrected the error by adjusting his salary accordingly. (Plaintiff's Ex. 223 at 363, 380).
99. Plaintiff continues to be employed at the Junior-Senior High School as an English teacher. (Amended Complaint ¶ 6(C)).
100. Any additional facts necessary to a full resolution of Plaintiff's claims will be addressed in the Discussion Section below.

**II. Summary Judgment Standard**

A party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of

law.” Fed. R. Civ. P. 56(c). In considering a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. *See Spraying Sys. Co. v. Delavan, Inc.*, 975 F.2d 387, 392 (7th Cir. 1992). The court’s function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial.

In determining whether a genuine issue of material fact exists, the court must view the record and all reasonable inferences in the light most favorable to the non-moving party. *Heft v. Moore*, 351 F.3d 278, 283 (7th Cir. 2003). The moving party bears the burden of demonstrating the “absence of evidence on an essential element of the non-moving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The non-moving party may not, however, simply rest on the pleadings, but must demonstrate by specific factual allegations that a genuine issue of material fact exists for trial. *Green v. Whiteco Industries, Inc.*, 17 F.3d 199, 201 (7th Cir. 1994) (citing *Celotex*, 477 U.S. at 322)).

### **III. Discussion**

#### **A. Discrimination Claims**

Plaintiff claims the Defendants discriminated against her on the basis of her sex, race, color, and natural origin. In support of these claims, Plaintiff cites to the following incidents: (1) Mr. Child’s “criticism” of Plaintiff’s ten-minute in-class recitation of being stopped by a policeman in November 1994 because she and her husband looked “Mexican” (*see* Finding of Fact # 28); Mr. Bunger’s failure to adequately address her concerns regarding the Fisher-Brockman incident (*see* Findings of Fact ## 41-43); (3) Mr. Child’s inquiry (she refers to as his “accusation”) as to whether she allowed a cell-phone picture of a penis to be shown in her classroom (*see* Finding of Fact # 40); and (4) Mr. Bunger’s failure to adequately address her

request to discipline Fisher for the computer lab incident (*see* Finding of Fact # 48). (*See* Plaintiff’s Amended Response at 42-43). In Counts I (sex) and II (race, color, and natural origin) of her Amended Complaint, she brings her claims under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”) against the School Corporation and the Board. In Count IV of her Amended Complaint, she brings her claims under 42 U.S.C. § 1981 (“Section 1981”) against the “Natural Defendants<sup>1</sup>” and students, in their individual capacities. And in Count IX of her Amended Complaint, she brings her claims under 20 U.S.C. § 1681 *et seq.* (“Title IX”) against the School Corporation and the Board. Although pled under different legal theories, the analysis is the same.

Plaintiff, as the alleged victim of unlawful discrimination, may prove her claims by moving under either the direct or indirect method of proof. *Atanus v. Perry*, – F.3d –, 2008 WL 696908, at \*5 (7th Cir. 2008); *Rudin v. Lincoln Land Community College*, 420 F.3d 712, 719-20 (7th Cir. 2005); *Herron v. DaimlerChrysler Corp.*, 388 F.3d 293, 299 (7th Cir. 2004); *Vakharia v. Swedish Covenant Hosp.*, 190 F.3d 799, 806 (7th Cir. 1999). Under the direct method, Plaintiff may show, through direct or circumstantial evidence, that the employer’s decision to take the adverse job action was motivated by an impermissible purpose such as race, sex, color, or national origin. *Atanus*, – F.3d –, 2008 WL 696908, at \* 6; *Rudin*, 420 F.3d at 719-20; *Pafford v. Herman*, 148 F.3d 658, 665 (7th Cir. 1998). Under the indirect, burden-shifting method, Plaintiff must first establish a *prima facie* case of discrimination. *Atanus*, – F.3d –, 2008 WL 696908, at \* 6; *Herron*, 388 F.3d at 299; *Vakharia*, 190 F.3d at 807. This requires the

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<sup>1</sup> Hereinafter, the School Corporation and the Board will be referred to collectively as the “Defendants,” and the individual Defendants listed in the caption will be referred to as the “Natural Defendants,” as is consistent with Plaintiff’s Amended Complaint.

Plaintiff to show that: (1) she is a member of a protected class; (2) she was meeting her employer's legitimate expectations; (3) her employer took an adverse employment action against her; and (4) her employer treated similarly situated employees outside the protected class more favorably. *Atanus*, – F.3d – , 2008 WL 696908, at \* 6 (Title VII race, color, religion, gender, and national origin discrimination); *Herron*, 388 F.3d at 299 (noting that the court employs the same analytical framework to Title VII and Section 1981 claims); *Andriakos v. Univ. of Southern Indiana*, 1994 WL 83331, at \* 4 (7th Cir. 1994) (applying the *McDonnell Douglas* indirect method of proof to a Title IX discrimination claim).

In Plaintiff's Response Brief, Plaintiff does not apprise the court of the method by which she proceeds. However, under either method, Plaintiff is required to show that she suffered an adverse employment action. *Burks v. Wisconsin Dep't of Transp.*, 464 F.3d 744, 750 n.3 (7th Cir. 2006) (noting that the “direct method” . . . requires that the plaintiff put forth evidence that demonstrates that she was a member of a protected class and *as a result* suffered the adverse employment action of which [s]he complains”) (quoting *Sylvester v. SOS Children's Villages Ill., Inc.*, 453 F.3d 900, 902 (7th Cir. 2006) (emphasis in original)). In order to demonstrate that she suffered an adverse employment action under either method of proof, she must show that: (1) her “compensation, fringe benefits, or other financial terms of employment [were] diminished, including, . . . termination of [her] employment”; (2) “a nominally lateral transfer with no change in financial terms significantly reduce[d] [her] career prospects by preventing [her] from using the skills in which [she] is trained and experienced, so that the skills are likely to atrophy and [her] career is likely to be stunted,” or, even in the absence of a transfer, that her job was “changed in a way that injure[d] her career”; or (3) “the conditions in which she works are changed in a way that subjects [her] to a humiliating, degrading, unsafe, unhealthful, or

otherwise significantly negative alteration in [her] workplace environment – an alteration that can fairly be characterized as objectively creating a hardship . . .” *Herrnreiter v. Chicago Housing Authority*, 315 F.3d 742, 744 (7th Cir. 2002).

The court presumes<sup>2</sup> that the adverse employment action at issue is her reassignment from Senior English to English 7. Plaintiff claims that her reassignment was widely perceived by students and faculty as a demotion, that teaching English 7 is less prestigious than teaching Senior English, as teaching Senior level courses requires more specialized training. The evidence she cites in support of this argument are the affidavits of fellow teachers Brogan (also the NCCTA President), Michelle Brown (“Ms. Brown”), and Ralph Emerson (“Mr. Emerson”). Their affidavits state<sup>3</sup>:

Teaching Senior Honors/AP English requires more training, and specialized training, than teaching Seventh and Eighth grade English and Honors English.

Teaching Senior English and Senior Honors/AP English is viewed as more prestigious than teaching Seventh and Eighth grade English in the academic community.

The removal of [Plaintiff] from teaching Senior English and Senior Honors/AP

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<sup>2</sup> In the argument section of her brief addressing her discrimination claims, Plaintiff fails to discuss any of the elements of a prima facie case of discrimination. She merely reiterates the instances of misconduct which she alleges form the basis of her claims. Viewing the facts in the light most favorable to Plaintiff, and with respect to the required element of an adverse employment action, the court assumes that the arguments she makes in support of her retaliation claim also apply to her discrimination claims.

<sup>3</sup> Ms. Brogan and Mr. Emerson also allege that Plaintiff’s new position is a “floater” position – i.e., that she is assigned to whatever grade-level position is available in a given year – and that, as such, her position is vulnerable to a slowdown in the economy. (Brogan Aff. ¶¶ 42, 43, 55; Emerson Aff. ¶¶ 45, 46, 57). These teachers are not competent to opine as to the type of position Plaintiff holds with the School Corporation, as they do not have personal knowledge of this fact. The best evidence is Plaintiff’s teacher contract for the 2004–05 school year, which does not designate her as a “floater” teacher. (Plaintiff’s Dep. Ex. 33). Accordingly, the court resists Plaintiff’s attempt to demean her present employment with the School Corporation.

was widely perceived by the faculty and the students as a demotion and a negative blot on her teaching career, and it has harmed her professional reputation.

(Affidavit of Deborah Brogan ¶¶ 28, 29, 31; Affidavit of Michelle Brown ¶¶ 16, 17, 19; Affidavit of Ralph Emerson ¶¶ 31, 32, 34).

Whether Plaintiff's reassignment was viewed as less prestigious or not, Plaintiff has failed to show that her career has been harmed. Indeed, aside from the subjective, speculative and self-serving testimony of her colleagues, she has presented no objective evidence that her chances of promotion have been thwarted, or that the transfer, as opposed to the rumor mill, has harmed her career in any way. *See O'Neal v. City of Chicago*, 392 F.3d 909, 912 (7th Cir. 2004) ("Even if the rumor did tarnish her reputation, which could ultimately diminish her chances for promotion, [Plaintiff] has presented no evidence that the *transfer*, the employment action at issue, rather than the rumor itself, caused this harm."). She continues to receive the same pay and benefits, continues to teach in the same building, and continues to hold the same job title: "Teacher." (*See* Plaintiff's Dep. Ex. 33; *see also* Amended Complaint Ex. 3 at Art. III). Moreover, her teaching reassignment falls squarely within her certification; thus, her teaching skills in the area in which she is certified are not subject to atrophy and the progress of her career as an English teacher is not stunted. Plaintiff's claim that she engaged in significant training to teach Honors English – which training she claims is now "wasted" – is belied by the evidence. At most, she spent a total of four days at two seminars.

In short, Plaintiff's reassignment caused her no tangible job consequence. *Whittaker v. Northern Ill. Univ.*, 424 F.3d 640, 648 (7th Cir. 2005) (quoting *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir. 1996)). The fact that she would rather teach Senior English "do[es] not justify trundling out the heavy artillery of federal antidiscrimination law." *Herrnreiter*, 315 F.3d at

745. For these reasons, the court finds that Plaintiff's reassignment from Senior English to English 7 is not an adverse employment action. Accordingly, Defendant's Motion for Summary Judgment on Plaintiff's discrimination claims alleged in Counts I, II, IV, and IX is **GRANTED**.

**B. Hostile Work Environment Claims Against the School Corporation and the School Board**

In Counts I, II, and IX of Plaintiff's Amended Complaint, Plaintiff alleges that the Defendants subjected her to a hostile work environment, and, in Count VII, Plaintiff alleges that the Defendants were deliberately indifferent to and facilitated that environment. More specifically, in Count VII, she alleges that the Defendants maintained a policy and practice of deliberate indifference to instances of known or suspected sexual and racial harassment by students. She further claims that these practices, customs or policies created a climate which facilitated sexual and racial harassment toward her by the students. These claims are brought under Title VII, Title IX, and Section 1981.

To establish a prima facie case of racial or sexual hostile environment under Title VII, Title IX, or Section 1981, Plaintiff must first show that because of her race or sex: (1) she was subjected to unwelcome harassment; (2) the harassment was based on her race or sex; (3) the harassment was sufficiently severe or pervasive so as to alter the conditions of her employment and create a hostile or abusive atmosphere; and (4) there is a basis for employer liability.

*Kampmier v. Emeritus Corp.*, 472 F.3d 930, 940 (7th Cir. 2007) (Title VII sexual harassment); *Luckie v. Ameritech Corp.*, 389 F.3d 708, 713 (7th Cir. 2004) (Title VII racial harassment); *Mary M. v. North Lawrence Comm. Sch. Corp.*, 131 F.3d 1220, 1228 (7th Cir. 1997) (Title IX sexual harassment). In order for the Defendants to be found liable under the facts and circumstances of this case, they must be found to have acted with deliberate indifference to the harassing conduct.

*Gebser v. Lago Vista Indep. Sch. Dist.*, 118 S.Ct. 1989, 1999 (1998). In other words, Defendants' liability arises only if the evidence shows that they made an "official decision . . . not to remedy the violation." *Id.*

The incidents upon which Plaintiff relies to support her racial harassment claims are the same incidents which formed the basis of her discrimination claims. (*See* Plaintiff's Amended Response at 42-43<sup>4</sup>). Accordingly, the incidents which she alleges constitute racial harassment are: (1) the students' "Dirty Mexican" and "Is this how they do it in Mexico?" remarks; and (2) Mr. Child's "criticism" of Plaintiff's ten-minute in-class response to a student's question in which she discussed the time she and her husband were stopped by a policeman because they looked "Mexican."

With respect to the comments made by the students, Plaintiff testified that she did not refer those students for discipline for uttering those comments, and "handled the situation in the classroom" pursuant to the School Corporation's disciplinary policy. (Plaintiff Dep. at 145). The court finds the Plaintiff's evidence fails to show that her work environment was both objectively and subjectively hostile. *Kampmier*, 472 F.3d at 941 ("To prove that her work environment was hostile, [plaintiff] must demonstrate that it was both objectively and subjectively hostile"). While the comments could be viewed as objectively offensive, there is no evidence in the record to show that these comments were uttered more than once. Indeed, if that were the case, based upon Plaintiff's past actions, she would have referred those students to Mr. Bunger for discipline. The court therefore finds that the comments were not sufficiently severe

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<sup>4</sup> Plaintiff does not discuss the "Dirty Mexican" and "Is that how they do it in Mexico" comments allegedly made by two of her students. The court presumes this was an oversight on Plaintiff's part, and will therefore address the merits of those incidents with respect to her racial harassment claim.

or pervasive so as to alter the conditions of Plaintiff's working environment.

With respect to Mr. Childs' "criticism" of her racial profiling story, the evidence reflects that Mr. Childs' comments were not racially-oriented. The best evidence on this point is found in Plaintiff's November 13, 2003, Teacher Visitation Report, the document upon which Plaintiff's claim is based. Mr. Child's comments are as follows:

When the student asked for you to share something deep you presented a nearly ten minute detailed personal experience. The interviewer asked only one broad question and received much information. To use this as an opportunity to model the assignment you need to make the interviewer ask you more questions in order to get information. Most students will not 'run' with one question as you were able to do. We also talked about the need to build in parameters to prevent the interviewer from placing questionable assumptions in a biographical essay that will be shared with others.

(Plaintiff Dep. Ex. 11). As is evident from Mr. Childs' own words, his comments with respect to Plaintiff's racial profiling story are not racially motivated. *Luckie*, 389 F.3d at 713 (incidents of which plaintiff complains must be related to her race). Indeed, as the Principal of the Junior-Senior High School, Mr. Childs certainly had the authority to critique her teaching style. (*See also* Plaintiff's Dep. Ex. 11, Plaintiff's Response to the Teacher Visitation Report, in which she refers to Mr. Childs' criticism as really a difference of opinion with respect to "teaching styles."). The fact that Plaintiff chose to inject a real-life story in which she perceived she and her husband to be the victims of discrimination is wholly beside the point.

Plaintiff's sexual harassment claims fare no better. In support of this claim, she cites to the following incidents: (1) Mr. Bunker's failure to address the Fisher-Brockman incident in a timely manner; (2) Mr. Childs' "accusation" that she allowed a cell phone picture of a naked penis, to be shown in her classroom; and (3) Mr. Bunker's failure to adequately address the computer lab incident. (Plaintiff's Amended Response at 43).

The Fisher-Brockman and Playboy magazine incidents which were displayed in her classroom were isolated, childish pranks that were neither sufficiently severe nor pervasive to rise to the level of actionable sexual harassment. *Ngeunjuntr v. Metropolitan Life Ins. Co.*, 146 F.3d 464, 467 (7th Cir. 1998) (“[R]elatively isolated instances of nonsevere misconduct will not support a claim of hostile work environment”). In addition, there is no evidence that these pranks were played upon Plaintiff because of her sex (or race for that matter). To the contrary, Plaintiff admits that one student informed her that the students targeted Plaintiff for the Playboy magazine prank because she had been absent the day before, and they “couldn’t resist.” (Plaintiff Dep. at 433-434). Plaintiff also testified that Fisher confronted Plaintiff in the computer lab because he was angry that she reported him to the administration for his involvement in the Fisher-Brockman incident, not because she is a Hispanic female. (Plaintiff Dep. at 407 (“[Fisher] hasn’t the right to antagonize me or be insubordinate when he walked by me. That’s what it was about.”)).

Most importantly, there is no basis for employer liability on any of the Plaintiff’s hostile environment claims. With respect to her racial harassment claim premised upon her students’ allegedly discriminatory remarks – her only colorable claim – Plaintiff never gave the administration the opportunity to correct the alleged harassment because she did not bring the matter to their attention until after she had the situation under control. (Plaintiff Dep. at 145). With respect to her sexual harassment claims, the undisputed evidence shows that Mr. Bunger and Mr. Childs not only investigated Plaintiff’s disciplinary referrals, but also suspended the students involved in the incidents. Mr. Bunger also counseled Fisher with respect to the computer lab incident. Although Plaintiff may disagree with the discipline imposed upon these students, that does not establish that the Defendants were deliberately indifferent to her

complaints. *Davis v. Monroe County Bd. of Educ.*, 119 S.Ct. 1661, 1674 (1999) (To avoid liability, the Defendants “must merely respond to known . . . harassment in a manner that is not clearly unreasonable.”). In conclusion, Plaintiff’s allegations of hostile work environment fail as a matter of law. Therefore, Defendants’ Motion for Summary Judgment on Plaintiff’s hostile work environment claims in Counts I, II, and IX must be **GRANTED**.

### **C. Retaliation**

In Counts III and X of Plaintiff’s Amended Complaint, Plaintiff alleges that the Defendants retaliated against her in violation of Title VII and Title IX respectively for complaining about alleged discrimination. She proceeds under both the direct and indirect methods of proof. Under the direct method, Plaintiff must present either direct or circumstantial evidence showing that : (1) she engaged in statutorily protected activity; (2) she suffered an adverse action; and (3) there exists a causal connection between the protected activity and the adverse action. *Metzger v. Illinois State Police*, 519 F.3d 677, 681 (7th Cir. 2008); *Humphries v. CBOS West, Inc.*, 474 F.3d 387, 404 (7th Cir. 2007). Under the indirect method, Plaintiff must present evidence showing that: (1) she engaged in statutorily protected activity; (2) she was performing her job to her employer’s legitimate expectations; (3) she suffered an employment action; and (4) she was treated less favorably than similarly situated employees who did not engage in statutorily protected expression. *Metzger*, 519 F.3d at 681; *Pantoja v. Am. NTN Bearing Mfg. Corp.*, 495 F.3d 840, 848 (7th Cir. 2007). Under both approaches, the plaintiff must demonstrate that she suffered an adverse action. *Pantoja*, 495 F.3d at 848-49.

“The standard for whether an adverse [] action is ‘material,’ and therefore actionable is somewhat broader for retaliation claims than for disparate treatment claims.” *Fulmore v. Home Depot, U.S.A., Inc.*, 423 F. Supp. 2d 861, 879 (S.D. Ind. 2006) (citing 42 U.S.C. § 2000e-2(a),

2000e-3(a)). Thus, an employer's action will be actionable in the retaliation context if it would have "dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern & Santa Fe Railway Co. v. White*, 126 S.Ct. 2405, 2415 (2006) (citing *Rochon v. Gonzales*, 438 F.3d 1211 (D.C. Cir. 2006) (quoting *Washington v. Ill. Dept. of Revenue*, 420 F.3d 658 (7th Cir. 2005))).

In support of her argument, Plaintiff claims that her job reassignment from Senior English to English 7 was an adverse action. She cites to *Burlington Northern & Santa Fe Ry. Co. v. White*, 126 S.Ct. 2405 (2006) and *Tart v. Ill. Power Co.*, 366 F.3d 461 (7th Cir. 2004), in support of her argument. As Plaintiff vigorously argues her claim for retaliation, the court elects to discuss these cases, and their applicability to Plaintiff's particular case, with acute specificity.

In *Burlington Northern*, plaintiff, a female, was hired as a "track laborer," with her primary responsibility being the operator of a forklift at a company site. 126 S.Ct. at 2409. She was the only female employee. After plaintiff complained that her immediate supervisor was sexually harassing her, she was removed from forklift duty and assigned to standard track laborer tasks – work that involved less skilled duties and much dirtier working conditions. *Id.* Thereafter, plaintiff had a dispute with a different immediate supervisor and was suspended for 37 days without pay for insubordination. *Id.* The company later determined that plaintiff had not been insubordinate and reinstated her with back pay. *Id.* Plaintiff filed suit alleging the unpaid suspension and change in job responsibilities was unlawful retaliation under Title VII. Plaintiff prevailed at trial, and the verdict was affirmed on appeal. *Id.* at 2410.

In addressing the change in plaintiff's job responsibilities, the Court acknowledged that "reassignment of job duties is not automatically actionable." *Id.* at 2417. "Whether a particular reassignment is materially adverse depends upon the circumstances of the particular case, and

‘should be judged from the perspective of a reasonable person in the plaintiff’s position, considering ‘all the circumstances.’” *Id.* (quoting *Oncale v. Sunflower Offshore Serv., Inc.*, 118 S.Ct. 998, 1003 (1998)). The Court found that the evidence showed that the track labor duties were much more arduous and “dirtier”, and that the forklift position required more qualifications. *Id.* On that record, the Court determined that a jury could reasonably conclude that the reassignment of job duties was materially adverse to a reasonable employee. *Id.*

In *Tart*, two African-American employees were “gas journeymen” for Illinois Power Company. 366 F.3d at 464. As “gas journeymen,” plaintiffs engaged in skilled work locating and repairing gas leaks. *Id.* Plaintiff Curtis operated a two-man truck and had supervisory responsibilities over the other employee in his truck. In addition, Curtis worked in the meter shop and performed computer duties. *Id.* at 464, 467. The second plaintiff, Tart, was his own boss on a one-man truck and was permitted to make his own decisions. Both plaintiffs worked without any trouble until a new white plant manager was hired by Illinois Power Company. After the new plant manager was hired, a white co-worker began harassing Curtis and Tart. *Id.* at 464-66. When they asked the plant manager to intervene, he ignored their requests. Instead, the plant manager began scrutinizing Curtis’ work. *Id.* at 465. Curtis then called the company’s Human Resources Division.

When the plant manager found out, he called a plant meeting. At the company meeting, Curtis admitted to calling Human Resources. *Id.* The plant manager instructed Curtis to call Human Resources and tell them that he had made a mistake in calling them or that he did not need their services. *Id.* The plant manager told Curtis that if Human Resources came to the plant, then someone was going to be fired. *Id.* at 466. After the meeting, Curtis and Tart feared for their jobs. *Id.*

The co-worker harassment continued and increasingly adverse changes in their working environment followed. Curtis and Tart tolerated the situation until the plant manager disciplined them for allegedly taking too long to fix a gas leak even though other white employees routinely spent as much time on that type of job as Curtis and Tart. *Id.* at 467. The plant manager suspended the plaintiffs for one day and took away their overtime pay. *Id.* Eventually, the plant manager reassigned Curtis and Tart to a two-man truck, under an employee Curtis had trained, and reassigned him to work outdoors in the cold and rain digging ditches under the supervision of another subordinate Curtis had trained. *Id.* at 467-68, 473.

Curtis and Tart filed suit alleging discrimination and retaliation under Title VII and Section 1981. The Seventh Circuit determined the reassignment from the meter shop to a ditch digging position did not involve the use of the same skills and “the differences between the jobs could hardly be described as trivial.” *Id.* at 473. The ditch digging duties involved far less skill and significantly harsher working conditions than Curtis’ and Tart’s prior duties. *Id.* The Court further noted that few workers would choose to leave a skilled job where they worked independently or in an office environment to report to “winter ditch digging duty under the supervision of employees they had previously trained.” *Id.* at 473-74.

As is born out by the facts in *Burlington Northern* and *Tart*, in order for a plaintiff to prevail on her retaliation claim based upon a job reassignment, the plaintiff must show that her working conditions changed materially from the perspective of a reasonable employee standing in the shoes of the plaintiff. *Burlington Northern*, 126 S.Ct. at 2417. In other words, a plaintiff claiming retaliation must show that her working conditions “were objectively inferior” than those she previously had. *Tart*, 366 F.3d at 473. Trivial and insignificant changes in a plaintiff’s job duties are insufficient to meet that burden. *Id.*

In the present case, Plaintiff's working conditions have not changed. She continues to work in the same building with the same colleagues. Her reassigned duties are the same teaching duties she successfully performed for all but one year of teaching for the School Corporation. Moreover, and as noted in the court's earlier discussion, Plaintiff continues to receive the same pay, benefits, and privileges of employment teaching English 7 as she enjoyed teaching Senior English. (See Section III.A.). Although Plaintiff maintains that teaching English 12 and Honors English requires more training, she has no evidence apart from her colleagues' conclusory assertions, to substantiate that point. (Brogan Aff. ¶ 28; Brown Aff. ¶ 16; Emerson Aff. ¶ 31). In short, Plaintiff's reassignment was not the type of reassignment that an objective person standing in her shoes would find materially adverse. Having failed to establish an adverse employment action, Plaintiff's retaliation claims fail as a matter of law. Defendants' Motion for Summary Judgment on Counts I, II, and X of Plaintiff's Amended Complaint must therefore be **GRANTED**.

**D. Section 1983 First Amendment Claim**

In Counts V and VI of Plaintiff's Amended Complaint, Plaintiff alleges that the Defendants and Natural Defendants retaliated<sup>5</sup> against her because she exercised her constitutional rights under the First Amendment in violation of 42 U.S.C. § 1983 ("Section 1983"). To state a claim under Section 1983, Plaintiff must allege: (1) that the conduct complained of was committed by a person acting under color of state law, and (2) that the conduct deprived her of rights, privileges, or immunities secured by the Constitution. *Kitzman-*

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<sup>5</sup> In Count V, Plaintiff also alleges that the Defendants discriminated against her on the basis of her sex, race, color, and national origin. Plaintiff does not argue this point in her Amended Response, however.

*Kelley v. Warner*, 203 F.3d 454, 457 (7th Cir. 2000). There is no dispute that the parties acted under color of state law. The issue is whether their conduct deprived her of her constitutional rights to free speech.

To establish a claim of retaliation in violation of the First Amendment under 42 U.S.C. § 1983, the court must engage in the following three-step analysis:

First, the court must determine whether the plaintiff's speech was constitutionally protected. If so, then the plaintiff must prove that the defendant's actions were motivated by the plaintiff's constitutionally protected speech. Finally, if the plaintiff can demonstrate that his constitutionally protected speech was a substantial or motivating factor in the defendant's actions, the defendant is given the opportunity to demonstrate that it would have taken the same action in the absence of the plaintiff's exercise of his rights under the First Amendment.

*Kuchenreuther v. City of Milwaukee*, 221 F.3d 967, 973 (7th Cir. 2000) (quoting *Kokkinis v. Ivkovich*, 185 F.3d 840, 843 (7th Cir. 1999)).

Plaintiff's speech is constitutionally protected only if it satisfies both elements of the test set forth in *Pickering v. Board of Education*, 88 S.Ct. 1731 (1968), as refined in *Connick v. Myers*, 103 S.Ct. 1684 (1983) (the "Pickering-Connick test"). The threshold inquiry is whether Plaintiff's speech is "fairly characterized as constituting speech on a matter of public concern." *Connick*, 103 S.Ct. 1690. If the court finds that Plaintiff's speech is constitutionally protected, the court must determine whether "the interests of [Plaintiff] as a citizen, in commenting upon a matter of public concern, outweigh the interests of the State, as an employer, in promoting the efficiency of the public service it performs through its employees." *Kuchenreuther*, 221 F.3d at 973 (quoting *Connick*, 103 S.Ct. 1687) (internal quotations omitted). Speech that fails to satisfy either part of this test is not constitutionally protected as a matter of law, and the court's inquiry is at an end. *Id.*

The statements Plaintiff contends are protected speech include: (1) Mr. Childs'

November 2003 Teacher Visitation Report comment regarding Plaintiff's racial profiling story; (2) Plaintiff's May 7, 2003, complaint to Mr. Bunger regarding the Fisher-Brockman incident; (3) Plaintiff's May 13, 2003, complaint to Mr. Bunger regarding his delay in addressing the Fisher-Brockman incident; (4) Plaintiff's May 13, 2003, complaint to Mr. Childs regarding the same incident, and noting that she "wish[ed] to avoid being accused of allowing sexual harassment to fester in [her] classroom"; (4) Plaintiff's May 13, 2003, complaint to Mr. Bunger regarding the Playboy magazine incident; (5) Plaintiff's May 17, 2003, complaint regarding Mr. Bunger's handling of the computer lab incident; (6) Plaintiff's May 18, 2003, complaint to Mr. Bunger with respect to the Playboy magazine incident; (7) Plaintiff's May 19, 2003, email to Mr. Bunger, Mr. Childs, and Mr. Backmeyer complaining about the computer lab incident and the fact that the administration had not disciplined the boys involved in the Fisher-Brockman incident, and stating that she felt she was being "harassed now to the point that it has become a way of viewing my performance in the senior position"; (8) Plaintiff's complaint at the June 4, 2003, meeting to Mr. Childs and Mr. Bunger that they were reassigning her because she asked them "to do something about" the Fisher-Brockman and Playboy magazine incidents; (9) Plaintiff's June 29, 2004, EEOC charge of discrimination; (10) Plaintiff's August 4, 2004, grievance; and (11) Plaintiff's January 26, 2005, Complaint in this case. The court is required "to examine each incident separately to determine whether any touched on a matter of public concern." *Kuckenreuther*, 221 F.3d at 973.

The court now turns to the threshold inquiry: whether the incidents listed above are protected under the First Amendment. In making this determination, the court must evaluate the "content, form, and context of a given statement, as revealed by the whole record" and decide whether the speech is related "to any matter of political, social, or other concern to the

community.” *Connick*, 103 S.Ct. at 1690. Although the content of the speech is the most important factor for the court to consider, the motive of the speaker “may play some part in determining whether the speech is of public concern because speech that promotes a purely private interest is not protected.” *Marshall v. Porter Co. Planning Comm.*, 32 F.3d 1215, 1219 (7th Cir. 1994).

It appears from the facts advanced that Plaintiff disagreed with the manner in which Mr. Childs and Mr. Bunger handled the disciplinary process with respect to the students involved in the Fisher-Brockman and Playboy magazine incidents. Plaintiff believed that the disciplinary process evolved too slowly and that the discipline imparted did not send the right message to her students. Her criticism of the pace in which they investigated the Fisher-Brockman and Playboy magazine incidents and the discipline they ultimately rendered to the students involved is an internal administrative matter and not a matter of “political, social or other concern to the community.” *Connick*, 103 S.Ct. at 1690. *See also Cliff v. Board of Sch. Comm’rs of the City of Indianapolis*, 42 F.3d 403, 410 (7th Cir. 1995) (teacher’s statements about class size and lack of student discipline was not speech on issues of public concern).

The closer call is her May 19, 2004, email to Mr. Bunger and Mr. Childs. In that email, Plaintiff purports to speak out on a matter of public concern, that being, a hostile work environment. “The fact that an employee speaks up on a topic that may be deemed one of public import does not automatically render [her] remarks on that subject protected.” *Smith v. Fruin*, 28 F.3d 646, 651 (7th Cir. 1994). Rather, the court must consider, as noted above, the speech in its proper context. The May 19, 2004, email begins with Plaintiff reiterating the Playboy magazine incident, and the fact that she considered the incident “harassment of a teacher.” She then writes:

. . . The students are not taking the punishment dished out to Garrett Fisher seriously, and something more as to be done. I know pranks are common, but the types of issues that are surfacing condone a negative and hostile environment for women. This type of behavior is past the boys' club chauvinism. Besides all of this, do I have a reason to be concerned about my own safety? Probably so, but that will not put my back up against wall. I hope to see something happen.

(Plaintiff's Ex. 31).

The court finds this email, read in its proper context, is a personal expression of frustration at the administration's failure to promptly discipline Fisher and the other individuals involved in the Fisher-Brockman and Playboy magazine pranks. It is personal in the sense that (1) it is spoken on her own behalf and (2) in her own self-interest. *Smith*, 28 F.3d at 651. Accordingly, the court finds Plaintiff's May 19, 2004, email does not touch upon matters of public concern.

Plaintiff's EEOC charge of discrimination, Plaintiff's grievance, and Plaintiff's Complaint do not speak upon matters of public concern, as they address only her private grievances toward the administration and the discrimination she alleges she endured as a result of her reassignment. For these reasons, the court finds Plaintiff's First Amendment Section 1983 claims alleged in Counts V and VI of her Amended Complaint fail as a matter of law. Defendants' Motion for Summary Judgment with respect to Counts V and VI is therefore **GRANTED**.

#### **E. Breach of Contract**

In Count XI of her Amended Complaint, Plaintiff alleges the Defendants breached her contractual rights in six ways. First, she alleges the Defendants breached the "Teacher Evaluation Policy" because she was not given an opportunity to correct the problems of which the administration complained. Second, she alleges the Defendants breached the Job

Improvement Target provision of the Teacher Evaluation Policy by failing to give her an opportunity to correct any deficiencies in her teaching ability. Third, she alleges the Defendants breached their Public Complaint Policy because some parent and student complaints were not referred to her. Fourth, she alleges the Defendants violated their “Anti-Harassment Policy” by failing to vigorously enforce that policy. Fifth, she alleges the Defendants violated the Vacancy, Transfer, and Reassignment Policy because she was fully qualified to teach Senior English and because she was more qualified than her replacement, Mr. Chester. Finally, Plaintiff alleges the Defendants violated the Just Cause Policy because the Defendants unilaterally repealed it before the term of the contract. The court will address each of these arguments in turn below.

First, Plaintiff claims that the Defendants violated the “Teacher Evaluation Policy” by failing to mention any problems related to “Seniors, personality, curriculum, points for Senior portfolio, or parent or student complaints.” (Plaintiff’s Amended Response at 47). The “Teacher Evaluation Policy” provides that a teacher with two or more years of experience without permanent status<sup>6</sup> “shall be evaluated by the evaluator a minimum of one (1) time during the school year.” (Plaintiff’s Ex. 9 at 4). The Teacher Evaluation Policy speaks of an evaluation cycle, consisting, *inter alia*, of an observation by the building principal or vice-principal, a post-observation conference in which the teacher may respond to the comments posed by the evaluator, and a summative evaluation conference. (Plaintiff’s Ex. 9 at 5-6). The evaluator’s observations are typewritten on a form entitled “Teacher Visitation Report.” Prior to the summative evaluation conference, the evaluator fills out a Summative Evaluation, with the

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<sup>6</sup> The court is not aware of whether Plaintiff’s position was permanent or non-permanent. Permanent teachers “shall be evaluated a minimum of one (1) time every three (3) years following the attainment of permanent status.” Thus, giving Plaintiff the benefit of the doubt, she is entitled to, at most, one evaluation per year.

headings such as “Sets High Academic Standards for Students,” “Instructs Effectively,” “Motivates Students,” and the like. These documents are required to be completed on or before April 1. According to the Teacher Evaluation Policy, however, an “[a]dditional evaluation may be requested and/or appropriate after April 1.” (Plaintiff’s Ex. 9 at 4).

The evidence reflects that Plaintiff was formerly evaluated by Mr. Childs one time during the 2003-04 school year, pursuant to the Teacher Evaluation Policy, in November 2003. (Plaintiff’s Ex. 73). The November 2003 Teacher Visitation Report noted her deficiencies in pacing and inefficient use of classroom time. These problems were brought to Plaintiff’s attention through the appropriate channels, and she responded to the same.

The problems which precipitated her eventual transfer, and of which she now complains she did not have an opportunity to “correct,” did not arise until April and May 2004, after her annual teacher evaluation report was completed. (*See* Findings of Fact ## 33-53). Thus, these problems could not have been a part of her teacher evaluation. Moreover, there is nothing within the plain language of the Teacher Evaluation Policy that requires the administration to conduct a second teacher evaluation to address problems that arise after the required annual teacher evaluation occurs. (*See* Plaintiff’s Ex. 9 at 4) (An “[a]dditional evaluation may be requested and/or appropriate after April 1.”). Further, Plaintiff could have requested an additional evaluation, but chose not to. For these reasons, the court finds the Defendants did not violate the Teacher Evaluation Policy.

Second, Plaintiff claims the Defendants should have placed her on a job improvement plan to give her a reasonable opportunity to “correct” the problems the Defendants cited in support of her transfer. Thus, Plaintiff’s arguments with respect to the Job Improvement Target provision of the Teacher Evaluation Policy are basically the same as those referenced above.

The Job Improvement Target provision of the Teacher Evaluation Policy is triggered “[i]f the evaluator determines that the teacher’s performance is below the corporation’s standard of acceptable performance.” (Plaintiff’s Ex. 9 at 6). Again, the problems underlying the administration’s decision to reassign Plaintiff did not come to a head until the Spring of 2004, after the time in which all teacher evaluation documents were required to be completed. Plaintiff did not ask for, and the administration was not required, to conduct an additional teacher evaluation in May 2004, just before the close of the school year. Accordingly, the court finds the Defendants did not violate the Job Improvement Target provision of the Teacher Evaluation Plan.

Third, Plaintiff claims the Defendants violated the Public Complaint Policy because some of the parent and student complaints were not initially referred to her to resolve. The Public Complaint Policy provides a four-step process by which public complaints are processed. “If it is a matter specifically directed toward a professional staff member, the matter must be addressed, initially, to the concerned staff member who shall discuss it promptly with the complainant . . .” (Plaintiff’s Ex. 133 at NC Fed 0436).

The evidence reflects that the public complaints of which Plaintiff speaks occurred in May 2004, when Mr. Childs began receiving complaints by Plaintiff’s students and their parents. (Childs Dep. at 78-79). The exact dates of these complaints is unknown, and the venue by which they were communicated is unknown. At any rate, Mr. Childs did not direct these complaints to Plaintiff, and did not inform her of these complaints until the end of the school year. To the extent the students’ and parents’ complaints were subject to this Public Complaint Policy, and to the extent it was violated by the Defendants, Plaintiff has set forth no evidence of damage to her as a result of the alleged breach, an essential element to a breach of contract claim under Indiana

law. *American Family Mut. Ins. v. Matusiak*, 878 N.E.2d 529, 533 (Ind.Ct.App. 2007) (“The essential elements of a breach of contract action are the existence of the contract, the defendant’s breach thereof, and damages.”) (quoting *Rogier v. Am. Testing and Eng’g Corp.*, 734 N.E.2d 606, 614 (Ind.Ct.App. 2000)). Accordingly, Plaintiff’s breach of contract claim premised on the Public Complaint Policy fails as a matter of law.

Fourth, Plaintiff claims the Defendants violated their “Anti-Harassment Policy.” The Anti-Harassment Policy provides that “[i]t is the policy of the [Board] to maintain an education and work environment which is free from all forms of unlawful harassment, including sexual harassment.”). (Plaintiff’s Ex. 131 at NC Fed 0418). The Board is directed to “vigorously enforce” the policy by, among other things, investigating allegations of harassment “and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment.” (*Id.*).

Here, the undisputed evidence reflects that Mr. Bunger and Mr. Childs not only investigated Plaintiff’s student disciplinary referrals regarding the Fisher-Brockman and Playboy magazine incidents, but they suspended the students involved in the incidents. Mr. Bunger also counseled Fisher for his role in the computer lab incident. The record clearly establishes that the Defendants investigated Plaintiff’s complaints and took action to address her concerns that her students were creating a hostile work environment for her. The Plaintiff’s claim that the Defendants violated the Anti-Harassment Policy is therefore without merit.

Fifth, Plaintiff claims that the Defendants violated the Vacancy, Transfer, and Reassignment Policy because there was no evidence that Plaintiff was not qualified to teach Senior English, and moreover, she was more qualified to teach Senior English than her replacement, Mr. Chester. The provision of the Vacancy, Transfer, and Reassignment Policy

dealing with reassignment reads:

Reassignment and/or transfer of an employee shall be made on the basis of qualifications. Employees who have requested transfer shall be notified in writing of the administrative action taken.

(Amended Complaint, Ex. 3 at Art. IX(c)).

The court finds the unambiguous language above grants the administration discretion to reassign teachers based upon qualifications. In this case, a vacancy was listed for the English Department for grades 7 through 12 at the end of the 2003-04 school year. When a position became available, Mr. Childs interviewed Mr. Chester, and, after the Board hired him to fill the vacancy, determined that he was better suited to teach Senior English, and that Plaintiff was better suited to teach English 7. Mr. Childs' decision was reasonable, and in his position as the Principal of the Junior-Senior High School, was his own to make. It is not for this court to second-guess that decision. Accordingly, the court finds the Defendants did not violate the Vacancy, Transfer, and Reassignment Policy.

Finally, Plaintiff claims the Defendants violated the Just Cause Policy by unilaterally repealing that policy during the term of the contract. There is no evidence that the Defendants violated the Policy. Indeed, the evidence reflects that the Defendants repealed the Policy through the proper channels by attaining Board approval in November 2004, after the terms of the CBA at issue in this case. (*See* Amended Complaint, Ex. 3 at Art. VII). Therefore, Plaintiff's claim that the Defendants violated the Just Cause and Appeal Policy is without merit. Defendants' Motion for Summary Judgment with respect to Plaintiff's breach of contract claim alleged in Count XI of her Amended Complaint is therefore **GRANTED**.

#### **F. Section 1983 Due Process Claims**

In Count V, Plaintiff alleges the Natural Defendants "reassigned [Plaintiff], and

transferred her without due process of law, and illegally repealed the Just Cause and Appeal Policy in violation of her Fourteenth Amendment rights to procedural and substantive due process. Plaintiff does not raise any argument in her Amended Response with respect to these claims. However, the court elects to discuss these claims below. The court now turns to her procedural due process claim.

### **1. Procedural Due Process**

In order to prevail on her procedural due process claim, Plaintiff must demonstrate: “(1) a cognizable property interest; (2) a deprivation of that interest; and (3) a denial of due process.” *Buttitta v. City of Chicago*, 9 F.3d 1198, 1201 (7th Cir. 1993). The threshold question under such an examination is whether a property interest actually exists. *Id.* “The text of the Fourteenth Amendment speaks of ‘property’ without qualification, and it is well-settled that state-created property interests, including some contract rights, are entitled to protection under the procedural component of the Due Process Clause.” *Nicholas v. Pennsylvania State Univ.*, 227 F.3d 133, 140 (3d Cir. 2000). “However, created, a property interest is not constitutionally cognizable unless a person has a ‘legitimate claim to entitlement’ to the benefit.” *Buttitta*, 9 F.3d at 1202.

Plaintiff’s teacher’s contract is the source of her property right. Her contract employs her as a “teacher,” and not to any particular teaching assignment. (Plaintiff Dep. Exs. 4, 33). Likewise, the CBA does not give her any contractual entitlement to a particular teaching assignment. Article IX(c) of the CBA states: “Reassignment . . . of an employee shall be made on the basis of qualifications.” (Amended Complaint ¶ 34, Ex. 3 at Art. IX(c)). The plain language of the CBA permitted Mr. Childs to assign Plaintiff to teach English 7. Thus, Mr. Childs was not required to give her any procedural due process prior to making the

reassignment. Plaintiff's Section 1983 procedural due process claim therefore fails as a matter of law.

To the extent Plaintiff asserts a procedural due process claim predicated on the Just Cause Policy, the undisputed evidence reflects that she utilized those procedures, and the arbitrator found against her. More specifically, the arbitrator ruled that Plaintiff had no right to appeal her reassignment under the Policy because her reassignment was not a "reprimand" and was therefore not arbitrable under the Policy. (Plaintiff's Dep. Ex. 142). Thus, the arbitrator and not the School Corporation, determined that Plaintiff's reassignment did not trigger her right to procedural due process.

To the extent Plaintiff asserts a procedural due process claim based upon the fact that the Board repealed the Policy, this claim likewise fails. The Board's decision to repeal the Just Cause Policy occurred after Plaintiff arbitrated her appeal under that policy. Therefore, Plaintiff had the benefit of the procedures under that policy to reverse her teaching reassignment and she did not succeed. Her Section 1983 claim based upon the Defendants' repeal of the Just Cause Policy therefore fails as a matter of law.

## **2. Substantive Due Process**

"The essence of substantive due process is *protection of the individual from the exercise of governmental power without reasonable justification.*" *Christensen v. County of Boone, Ill.*, 483 F.3d 454, 468 (7th Cir. 2007) (emphasis in original). Such a claim "is most often described as an abuse of government power which 'shocks the conscience.'" *Tun v. Whitticker*, 398 F.3d 899, 902 (7th Cir. 2005); *see also Montgomery v. Stefaniak*, 410 F.3d 933, 939 (7th Cir. 2005).

Mr. Childs' decision to reassign Plaintiff does not "shock the conscience." In fact, Mr. Childs' decision was grounded in reason and logic, and was a legitimate exercise of his

discretionary authority as Principal of the Junior-Senior High School. Indeed, Plaintiff testified that she was aware that she could be assigned to teach any English class in grades Seven through Twelve. (Plaintiff Dep. at 53). In short, the decision to reassign Plaintiff matched her skills and her strengths with her duties. In doing so, the decision was not arbitrary. Plaintiff's substantive due process claim therefore fails as a matter of law. As both of Plaintiff's due process claims fail to raise a genuine issue of material fact, Defendants' Motion for Summary Judgment on Count V of her Amended Complaint must be **GRANTED**.

### **G. Conspiracy**

In Count VIII of Plaintiff's Amended Complaint, Plaintiff claims the Natural Defendants conspired against her in violation of 42 U.S.C. §§ 1981, 1983, and 1985 ("Section 1985") by developing and implementing a plan of retaliation against her to stifle or chill her exercise of her First Amendment rights, to discriminate against her because of her sex, race, color, and national origin, and to constructively discharge her. Plaintiff does not appear to raise any argument with respect to this claim in her Amended Response.

Liability under a Section 1985 conspiracy claim "must be predicated on a finding that two or more people agreed to violate the plaintiff's civil rights." *Williams v. Seniff*, 342 F.3d 774, 785 (7th Cir. 2003). In order to establish Section 1983 liability, Plaintiff must establish that: "(1) state officials and private individual(s) reached an understanding to deprive the plaintiff of h[er] constitutional rights"; and (2) those individual(s) were willful participant[s] in joint activity with the State or its agents.'" *Id.* (internal citations omitted).

Plaintiff has no evidence that the Natural Defendants conspired with each other or anyone else to violate her federally protected rights. Although she alleges that the Natural

Defendants developed and implemented a plan of retaliation against her to stifle or chill her exercise of her First Amendment rights, there is no evidence to support that allegation. As noted above, Plaintiff's First Amendment rights were not violated, let alone violated by a conspiracy. The evidence establishes that Plaintiff's reassignment was not a conspiracy, but rather a decision made by Mr. Childs alone. Therefore, Plaintiff's conspiracy claim fails as a matter of law.

Plaintiff also alleges that the Natural Defendants conspired against her in violation of her federal rights to constructively discharge her. However, Plaintiff's employment with the School Corporation has remained continuous since she was originally hired and she has never been terminated, either voluntarily or involuntarily. In fact, Plaintiff remains employed today as a teacher in the English Department at the Junior-Senior High School and continues to receive all compensation and benefits that she is entitled to receive under her individual teaching contract and the CBA. In addition, her working conditions are the same as those she worked in during her first two years of employment at Nettle Creek teaching Junior High English. Therefore, Plaintiff's claim that the Natural Defendants conspired against her to constructively discharge her has no merit.

Finally, to the extent Plaintiff claims that the Board's action of repealing the Just Cause Policy was a conspiracy to harm her on the basis of her sex, race, color, or national origin, that claim is equally without merit. The Board's decision to repeal the Policy was in response to, *inter alia*, the NCCTA's misuse of the Policy. The repeal of the Policy affected all teachers, male, female, white, African American, and Hispanic. Accordingly, this claim, likewise, fails as a matter of law. As none of Plaintiff's allegations of conspiracy raise an issue of material fact, Plaintiff's conspiracy claim as alleged in Count VIII of her Amended Complaint must be summarily dismissed. Defendants' Motion for Summary Judgment on Count VIII of her

Amended Complaint is therefore **GRANTED**.

**IV. Conclusion**

For the reasons set forth above, the court hereby finds the Defendant's Motion for Summary Judgment (Docket # 80) should be **GRANTED** on all claims of Plaintiff's Amended Complaint.

**SO ORDERED** this 3rd day of July 2008.

s/ *Richard L. Young*  
RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana

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