Team-E Non-Moving Plaintiff's Memorandum

TABLE OF CONTENTS

* Table of Authorities........................................................................................ 3
* Introduction and Request for Relief ............................................................... 4
* Statement of Facts .......................................................................................... 5
* Argument ........................................................................................................ 7
  + 1. Plaintiff Has Established a Prima Facie Case of Retaliation In the Form of a Hostile Work Environment as She Has Shown that She Engaged in a Protected Activity, Suffered from Adverse Employment Action, and There is Casual Link Between the Protected Activity and Adverse Action.......................................................................................................7
  + 2. Defendant is not shielded from liability under its affirmative Faragher-Ellerth defense because tangible employment action was taken against the Plaintiff, the Defendant failed to exercise reasonable care to prevent and correct promptly any sexually harassing behavior, and the Plaintiff did not unreasonably fail to take advantage of preventing or corrective opportunities or avoid harm otherwise............................................................................................... 14
* Conclusion and Prayer for Relief ................................................................... 20
* Signature Block .............................................................................................. 20

TABLE OF AUTHORITIES

**United State Supreme Court**

*Burlington N. & Santa Fe Ry. v. White,* 126 S. Ct. 2405 (2006)..........................................9

*Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998)...........................14, 16, 17, 18, 20

*Burlington Indus., Inc. v. Ellerth*, 118 S. Ct. 2257 (1998) …………………………. 15, 17

**United State Circuit Courts of Appeals**

*Howell v. Corr. Med. Servs.,* 612 F. App'x 590 (11th Cir. 2015) ..........................................7

*Crawford v. Carroll,* 529 F.3d 961 (11th Cir. 2008) .............................................................8

*Monaghan v. Worldpay US, Inc*., 955 F.3d 855 (11th Cir. 2020) .........................................8

*Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1278 (11th Cir. 2008) ....................12, 13

*Collins v. State of Illinois*, 830 F.2d 692, 703 (7th Cir. 1987) …………………………...15

*Knox v. Indiana*, 93 F.3d 1327 (7th Cir. 1996) .............................................................15, 18

*Dahm v. Flynn*, 60 F.3d 253 (7th Cir. 1994) .................................................................15, 18

*Smart v. Ball State Univ.*, 89 F.3d 437 (7th Cir. 1996) .......................................................16

**United State District Court**

*Booth v. Pasco Cty.*, 829 F. Supp. 2d 1180 (M.D. Fla. 2011) ...................................7, 10, 11

*Sharpe v. Glob. Sec. Int'l,* 766 F. Supp. 2d 1272 (S.D. Ala. 2011) .......................................9

**Statutes**

42 U.S.C.S. § 2000e-3 ......................................................................................................7, 8

**UNITED STATES DISTRICT COURT**

**MIDDLE DISTRICT OF FLORIDA**

Louise Shephard,

Plaintiff,

V.

Westmoor Military Institute,

Defendant.

Case No.: 2:25-cv-17241-RAR

**PLAINTIFF’S MEMORANDUM OF LAW OPPOSING THE DEFENSE’S MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION AND REQUEST FOR RELIEF

Plaintiff, Louise Shephard, respectfully asks the Court to deny summary judgement to Defendant. Pursuant to Federal Rule of Civil Procedure 56(a), Summary Judgement is only granted where there is no genuine dispute as to any material facts. See Fed. R. Civ. P. 56(a).

The Defendant's Motion for Summary Judgment fails to show that Dr. Shepard cannot make a prima facie case of a retaliatory hostile work environment arising from her employment with the Defendant. Furthermore, because the Defendant fails to show that the Plaintiff did not take advantage of reasonable opportunities made available to address discrimination—she did—we move this court to prohibit the Defendant from offering the affirmative *Faragher-Ellerth* defense.

Thus, Plaintiff respectfully requests that this Court denies Defendant’s Motion for Summary Judgment.

STATEMENT OF FACTS

This case addresses a pattern of discrimination against Dr. Shepard, a professor of philosophy, at her previous employer, the Defendant, Westmoor Military Institute.

The Defendant, an educational institution, employed Dr. Shepard as a professor in the philosophy department from June 2022 through April 2024. During this time, Dr. Shepard reported to Mark Riley, the head of the department. In his role, Riley had the responsibility and authority to address violations of the EEOC within the department. However, during her time working for the Defendant, Dr. Shepard experienced discrimination through a pattern of behaviors, including comments made by fellow faculty members, administrative decisions made by Riley discriminating against Dr. Shepard, and inaction on the part of Riley in addressing discrimination.

Comments showing discrimination include the following. Professor Carr, a fellow faculty member, commented publicly about Dr. Shepard’s performance, saying that he thought Dr. Shepard would not last long at Westmoor. Although Riley heard the comments, he failed to address it. Carr later recommended to students that they do not take courses taught by Dr. Shepard, as they would receive a minor in “Snow

Flake Studies.” R at 34-35. On another occasion, Carr said in front of other faculty, "here comes the social justice warrior," when Dr. Shepard approached. R at 29. The treatment of fellow female employees by Carr was known to staff, including an incident where Carr made comments regarding a woman at Westmoor, saying that her skirt was “impressively fit to form,” prompting the victim to immediately walk away while appearing to have been made to feel uncomfortable. R at 67.

When he saw a female cadet trip while carrying an ammo can during a training exercise, Professor Duke Hayes commented that the Westmoor Military Institute “went downhill in 1989,” the year that the Defendant began admitting women into the program, and—after turning to look at Dr. Shepard—said that “the same could be said for faculty.” R at 27.

Professor Beau Hayes told Dr. Shepard to “stop trying to change the world, just teach your little classes” and to “throw in a smile.” R at 34.

Riley, himself, commented publicly about Dr. Shepard on several occasions. When introducing Dr. Shepard to students, Riley described her as the “newest little lady on campus.” R at 23.

Riley also said to professor Healy, that she “acted beyond her rank,” and that she would “bring combat boots to a poetry reading.” Healy, replying to Riley, said that Dr. Shepard would “turn the philosophy department into a social justice blog” if she was not “kept in line.” R at 32. Riley Failed to address the comment by Healy.

Rile assigned new offices for faculty at the beginning of the Spring 2024 Semester. Beau Hayes and Carr were assigned to offices in the newest building, Calhoun Hall. While Dr. Shepard—despite being senior to Beau Hayes—was assigned to Hammond Hall, one of the oldest facilities on campus, plagued by mildew, a faulty heating system, and rats. R at 39-40.

In the Spring of 2024, Dr. Shepard was removed from teaching American Political Thought and was, instead, tasked with a second Introduction to Philosophy section and no upper level course. R at 40.

Dr. Shepard never saw the antiharassment policy until after the harassment occurred; she was never given a copy of the policy, nor was it particularly referred to at her employee orientation. R at 21.

Westmoor Human Resources fails to address the policy in any type of training, and simply sends employees a link to a library of HR resources that includes dozens of links, including years-old links that date back to at least 1989. R at 61, 72, 73, 74.

ARGUMENT

1. **Plaintiff Has Established a Prima Facie Case of Retaliation In the Form of a Hostile Work Environment as She Has Shown that She Engaged in a Protected Activity, Suffered from Adverse Employment Action, and There is Casual Link Between the Protected Activity and Adverse Action**

In efforts to encourage those facing discrimination not to be afraid to speak up, Title VII prohibits employers from retaliating against employees who oppose unlawful employment practices. 42 U.S.C.S. § 2000e-3. The employee’s opposition to unlawful employment practices can range from an informal complaint to filing a complaint with the EEOC. *Howell v. Corr. Med. Servs.,* 612 F. App'x 590, 591 (11th Cir. 2015) (Plaintiff engaged in protected activity when she complained about the racially-hostile work environment); *Booth v. Pasco Cty.*, 829 F. Supp. 2d 1180, (M.D. Fla. 2011) (Plaintiffs filed an EEOC complaint as well as various grievances).

The defendants and plaintiffs have stipulated that the 14th Circuit has adopted the 11th Circuit standard for a prima facie case of retaliation in the form of a hostile work environment. Therefore, to establish a prima facie case of retaliation in the form of a hostile work environment, the plaintiff must show 1) that they engaged in a protected activity under Title VII, 2) they suffered adverse employment action, and 3) there is a causal link between the protected activity and the adverse employment action. *Crawford v. Carroll,* 529 F.3d 961, 970 (11th Cir. 2008).

The plaintiff has successfully established a prima facie case of retaliation in the form of a hostile work environment as she engaged in protected activity at the faculty meeting on January 9th 2023, the plaintiff suffered various adverse material actions from the defendant, and there is a causal link between the plaintiff’s protected activity and the defendant’s adverse employment.

The defendants have stipulated that the statements made at the faculty meeting on January 9th 2023, where the plaintiff rightfully called out the defendants’ discrimination towards women, as a protected activity under 42 U.S.C § 2000e-3. Thus, the plaintiff only has to show the second and third prong of the prima facie case.

1. **The Plaintiff has established that she suffered adverse employment action as the defendants’ conduct would dissuade a reasonable workers from opposing discriminatory practices in the workplace**

An adverse employment action based on retaliation is conduct that "[may] have dissuaded a reasonable worker from making or supporting a charge of discrimination" *Monaghan v. Worldpay US, Inc*., 955 F.3d 855, 861 (11th Cir. 2020). In the case of claims of retaliation, an adverse employment action does not have to rise to the level of tangible employment, such as termination, demotion, suspension without pay, or other actions related to employment, as an employer can retaliate against an employee through actions not related to employment and harm employees outside the workplace. *Id*.; *Burlington N. & Santa Fe Ry. v. White,* 126 S. Ct. 2405, 2412 (2006).

An employee being demoted after engaging in a protected activity is considered a materially adverse employment action. *Sharpe v. Glob. Sec. Int'l,* 766 F. Supp. 2d 1272, 1293 (S.D. Ala. 2011). In *Sharpe*, the plaintiff filed a complaint alleging that his employer, the defendant, retaliated against him for engaging in protected activity by complaining about racially discriminatory pay discrepancies and filing an EEOC charge. *Id.* at 1277. In his complaint, the plaintiff listed being demoted from leadman, a job with more responsibility and prestige, to labor, a job without responsibility, as one of the ways he was retaliated against. *Id.* at 1292. The Alabama Southern District Court court held that the plaintiff's demotion constituted an adverse employment action, as demotion is an adverse action that might dissuade a reasonable worker from filing a charge of discrimination. *Id.* at 1293.The court found that, despite the plaintiff still having a job after the demotion, the demotion was still materially adverse, as it resulted in a substantial loss of prestige, respect, and responsibility. *Id.* at 1294. Such a loss is still considered materially adverse, as it would dissuade a reasonable worker from reporting discrimination in the workplace. *Id.* Therefore, the plaintiff's claim survived summary judgment. *Id.*

An employee being transferred to an office space with hazardous conditions, including rats and mold/mildew, is considered a materially adverse action. *Booth,* 829 F. Supp. 2d at 1194. In *Booth*, the plaintiffs alleged that the defendant retaliated against them after they engaged in protected activity under Title VII. *Id.* at 1186-87One of the plaintiffs alleged that after he was identified as a witness for the other plaintiff's grievance against the defendant for harassment based on race, one of the ways the defendant retaliated against him was by involuntarily transferring him to a rat-infested volunteer station with mold and electrical problems. *Id.* Florida Middle District Court held that this transfer to this undesirable, moldy, and rat-infested location can constitute an adverse employment action as it is sufficient to dissuade a reasonable worker from supporting a charge of discrimination. *Id.* at 1194-95. Therefore, the plaintiff's claim was sufficient to survive the defendants' Motion for Summary Judgment. *Id.* at 1195.

A plaintiff can still show adverse employment actions even if each action individually does not reach to that level, as courts will consider the actions collectively. *Id.* at 1192. In *Booth*, the plaintiffs alleged that the defendant retaliated against them after they engaged in protected activity under Title VII. *Id.* at 1186-87*.* One of the plaintiffs listed actions such as involuntary transfer, lower performance ratings, and failure to be promoted as adverse employment actions. *Id.* The defendants argued that these actions do not constitute adverse employment action under the retaliation standard. *Id.* at 1192. However, the court held otherwise. *Id.* The court found that these actions, when viewed collectively, are sufficient to survive the defendant's summary judgment, as when considering the actions together, they are sufficient to demonstrate an adverse employment action. *Id.*

When viewed collectively, the defendant's conduct has sufficiently established that the plaintiff suffered various adverse employment actions. Just like in *Booth*, certain actions like comments made by Riley, Carr, and Hayes may not be considered adverse action by itself, but looking at these comments as well as the demotion from an upper level class, being transferred to an hazardous office location, not being promoted despite being qualified under the standard Riley put forth, all of the actions collectively would dissuade a reasonable worker from opposing discrimination. R at 32-33, 35, 39-41.

Even if we ignored the comments made, the plaintiff still established that she suffered adverse employment action in two instances: being demoted and being transferred to a hazardous office location. R at 39-41. Just as in *Sharp*, the plaintiff was demoted when she was not assigned American Political Thought, an upper-level course, which resulted in a substantial loss of responsibility and prestige. R at 41. Even though she was given an introductory class, the plaintiff still suffered a substantial loss when she lost the responsibility and prestige that came with teaching an upper-level course. *Id.* Therefore, the demotion of not teaching an upper-level class is considered an adverse employment action, as the loss of responsibility and prestige would dissuade a reasonable worker from speaking up against discrimination.

Additionally, just like in Booth, the plaintiff was transferred to a hazardous office location that had asbestos and rats, which can be considered an adverse employment action. R at 39-41. When selecting offices for the staff to stay in while construction was underway, the defendant chose to relocate the plaintiff to an unsafe office location rather than one of the safe ones. R at 39, 87. Because this transfer to a hazardous location would dissuade a reasonable worker from making a charge of discrimination, the plaintiff suffered an adverse employment action.

Based on the evidence provided by the plaintiff, which shows that the defendant's various conduct constitutes a material adverse employment action, as it would dissuade a reasonable worker, the plaintiff has successfully established that she suffered a materially adverse action.

2. **The Plaintiff has established that there is a causal link between the protected activity and the material adverse action as the defendant was aware of the protected activity at the time the defendant took the adverse employment and other evidence points to the causation.**

To establish a causal link between the protected activity and the adverse employment action, the plaintiff must show that the two events are not completely unrelated. *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1278 (11th Cir. 2008)(Quoting *Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 (11th Cir. 1998)). The plaintiff must, at the very least, show that the defendant was aware of the protected activity at the time the defendant took the adverse employment action. *Id.* at 1278.

It is not fatal to a causation element that there is a gap between the protected activity and the adverse employment action if the plaintiff can provide evidence that also shows a causal relationship. *Id.* For example, in *Goldsmith*, the plaintiff filed an EEOC complaint for being subjected to a racially hostile work environment and a failure to be promoted to a field position based on race. *Id.* at 1271-1272. While the complaint was pending, the defendant requested that the plaintiff sign a dispute resolution agreement, which would require the plaintiff to arbitrate all past, present, and future claims against the defendant. *Id.* at 1271.Because the plaintiff knew this would include his EEOC complaint, he refused to sign, and as a result, he was fired. *Id.* at 1271-72. The defendant argued that the protected activity and the termination (which was materially adverse) were too remote, therefore, there is no causal relation. *Id.* at 1278. However, the 11th Circuit Court of Appeals held that a causal link still existed, as the plaintiff's use of the agreement as evidence helps establish a causal link between the protected activity and the adverse action. *Id.* Because he refused to sign a contract that would have applied to his EEOC charge and was subsequently fired for refusing to sign the document, the court held that this established a causal relationship between the EEOC complaint and the termination. *Id.* Furthermore, the defendant did not dispute that they were aware of the protected activity. *Id.* at 1278-79. Therefore, the evidence is sufficient for a reasonable jury to find the causal relationship. *Id* at 1279.

The plaintiff has established a causal link between the protected activity and the adverse employment action because the series of adverse employment actions occurred after the plaintiff engaged in the protected activity, and the actions were most often directed towards her. Furthermore, the defendants were aware of the protected activity when the adverse employment actions occurred. After the plaintiff engaged in protected activity, there was an increased of comments towards/about her such as Professor Healy saying "if Louise isn't kept in line, she'll turn the department into a social justice blog, Mark Riley saying "Louise brings combat boots to a poetry reading", and Professor Carr recommending to students that they do not take the plaintiff's class. R at 32, 34. Furthermore, after engaging in the protected activity, the plaintiff was passed over for teaching an additional class, demoted, and transferred to a hazardous location. R at 32, 39-41, As seen above, when considering the actions collectively, they amount to adverse employment actions that occurred after the protected activity. Just as in *Goldsmith*, the plaintiff has provided evidence showing that a significant portion of the adverse employment action was related to her speaking out against the discrimination at Westmoor, which is a protected activity. A protected activity that the defendant was aware of, as it happened in a faculty meeting on January 9th, 2023. R at 49-50.

1. **Defendant is not shielded from liability under its affirmative *Faragher-Ellerth* defense because tangible employment action was taken against the Plaintiff, the Defendant failed to exercise reasonable care to prevent and correct promptly any sexually harassing behavior, and the Plaintiff did not unreasonably fail to take advantage of preventing or corrective opportunities or avoid harm otherwise.**

Under *Faragher-Ellerth*, an employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. *Faragher v. City of Boca Raton*, 524 U.S. 775, 807–08, 118 S. Ct. 2275, 2292–93, 141 L. Ed. 2d 662 (1998). When no tangible employment action is taken, the defending employer can raise an affirmative defense to liability comprising two necessary elements: (1) the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. *Id.* at 807.

No affirmative defense is available when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment. *Id.* “Tangible employment actions are the means by which the supervisor brings the official power of the enterprise to bear on subordinates. A tangible employment decision requires an official act of the enterprise, a company act. The decision in most cases is documented in official company records, and may be subject to review by higher level supervisors.” *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 762, 118 S. Ct. 2257, 2269, 141 L. Ed. 2d 633 (1998). An “adverse job action is not limited solely to loss or reduction of pay or monetary benefits. It can encompass other forms of adversity as well.” *Collins v. State of Illinois*, 830 F.2d 692, 703 (7th Cir. 1987). For example, in *Knox v. State of Ind.*, the 1996 Seventh Circuit Court of Appeals stated that “No one would question the retaliatory effect of many actions that put the complainant in a more unfriendly working environment: actions like moving the person from a spacious, brightly lit office to a dingy closet, depriving the person of previously available support services (like secretarial help or a desktop computer), or cutting off challenging assignments.” 93 F.3d 1327, 1334. Further, “a dramatic downward shift in skill level required to perform job responsibilities can rise to the level of an adverse employment action.” *Dahm v. Flynn*, 60 F.3d 253, 257 (7th Cir. 1994). For an example of such adverse action, in *Collins*, “the employee was placed in a new department where her supervisors didn't even know what her job entailed. Her office was taken away from her… She also lost her phone, business cards, and listing in professional directories and publications. These changes were found to constitute adverse employment action.” *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir. 1996).

Proof that an employer had promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, however, the need for a stated policy suitable to the employment circumstances may appropriately be addressed regarding the first element. *Faragher* at 807. For example, in *Faragher*, Plaintiff Beth Ann Faragher brought an action against the City of Boca Raton and her supervisors, Silverman and Terry, alleging “the supervisors had created a ‘sexually hostile atmosphere’ at work by repeatedly subjecting Faragher and other female lifeguards to ‘uninvited and offensive touching,’ by making lewd remarks, and by speaking of women in offensive terms.” *Id.* at 775. In this case, in announcing the *Faragher-Ellerth* affirmative defense, the Supreme Court of the United States found that, while the City of Boca Raton had an antiharassment policy, the City failed the affirmative defense because “it completely failed to disseminate its policy among employees” such that employees were unaware of it. *Id.* at 782. Further, the City’s antiharassment policy “did not include any assurance that the harassing supervisors could be bypassed in registering complaints,” and the Court found that “Under such circumstances, we hold as a matter of law that the City could not be found to have exercised reasonable care to prevent the supervisors' harassing conduct.” *Id.* at 808.

Proof that an employee failed to fulfill their obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer. *Faragher* at 807-808. In the instant case, Defendant admitted that Plaintiff submitted a complaint to human resources and met with a human resources representative, so there is no controversy in the record as to whether Plaintiff appropriately filed a complaint as per company procedure. R at …

In the instant case, Defendant can not establish a *Faragher-Ellerth* defense, because there was a tangible employment action, the Defendant failed to exercise reasonable care to prevent and correct promptly any sexually harassing behavior, and the Plaintiff did not unreasonably fail to take advantage of preventing or corrective opportunities or avoid harm otherwise.

No affirmative defense is available when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment. *Faragher* at 807. This requires an official company act, usually documented in official company records. *Ellerth* at 762. For example, in *Collins*, an employee was relocated, removed from her office, and she lost her phone, business cards, and listing in professional directories, with significant professional setbacks. 830 F.2d 692. Similarly, in the instant case, Plaintiff was relocated to an undesirable location that was substantially worse and less safe than her previous office, and had no phone on the desk. R at 87, 88. There were clean, stately, well-furnished offices in another building that Plaintiff could have been assigned to. R at 91, 92, 93. Further, Plaintiff was subject to significant professional setbacks via her supervisor removing her ability to teach advanced courses. R at 26, 32, 33, 40, 41.

Plaintiff’s situation is the exact kind described in *Knox* and *Dahm*. The court in *Knox* described examples of clear retaliation as “actions like moving the person from a spacious, brightly lit office to a dingy closet… or cutting off challenging assignments.” 93 F.3d 1327, 1334. In the instant case, Plaintiff was moved from a clean, well-furnished room to one with less and lower-quality furnishings, poor heating, mildew, plumbing issues, and rodents. R at 40, 87, 88 In addition, Plaintiff’s supervisor cut Plaintiff off from challenging assignments of classes to teach. R at 26, 32, 33, 40, 41. The court in *Dahm* also described “a dramatic downward shift in skill level required to perform job responsibilities” as something that can be “an adverse employment action.” 60 F.3d 253, 257. Plaintiff’s supervisor removing Plaintiff from teaching advanced courses caused a dramatic downward shift in required skill levels such as the one described in *Dahm*. Therefore, there was a tangible employment action against Plaintiff.

Defendant did not exercise reasonable care to prevent and correct promptly any sexually harassing behavior. Proof that an employer had promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, however, the need for a stated policy suitable to the employment circumstances may appropriately be addressed regarding the first element. *Faragher* at 807. For example, in *Faragher*, Plaintiff brought an action against the City of Boca Raton and her supervisors, alleging “the supervisors had created a ‘sexually hostile atmosphere’ at work by repeatedly subjecting Faragher and other female lifeguards to ‘uninvited and offensive touching,’ by making lewd remarks, and by speaking of women in offensive terms.” *Id.* at 775. In this case, in announcing the *Faragher-Ellerth* affirmative defense, the Supreme Court of the United States found that, while the City of Boca Raton had an antiharassment policy, the City failed the affirmative defense because “it completely failed to disseminate its policy among employees” such that employees were unaware of it. *Id.* at 782. Further, the City’s antiharassment policy “did not include any assurance that the harassing supervisors could be bypassed in registering complaints,” and the Court found that “Under such circumstances, we hold as a matter of law that the City could not be found to have exercised reasonable care to prevent the supervisors' harassing conduct.” *Id.* at 808.

Similarly, in the instant case, the employer fails to establish its affirmative defense because it failed to distribute its antiharassment policy among employees. Plaintiff never saw the antiharassment policy until after the harassment occurred; she was never given a copy of the policy, nor was it particularly referred to at her employee orientation. R at 21. Westmoor Human Resources does not specifically address the policy in any type of training, and simply sends employees a link to a library of HR resources that includes dozens of links, including years-old links that date back to at least 1989. R at 61, 72, 73, 74. Further, the antiharassment policy does not include any assurance that harassing supervisors can be bypassed in registering complaints. R at 75. Similarly to the City in *Faragher*, while Westmoor had an antiharassment policy, it completely failed to disseminate that policy amongst its employees, and did not include any assurance that supervisors could be bypassed in the complaint process. Therefore, as the City in *Faragher*, as a matter of law, could not be found to have exercised reasonable care to prevent the supervisors’ harassing conduct, similarly here, Westmoor as a matter of law did not and could not be found to have exercised reasonable care to prevent and promptly correct Riley’s harassing conduct.

Defendant is not shielded from liability under its affirmative *Faragher-Ellerth* defense because tangible employment action was taken against the Plaintiff, the Defendant failed to exercise reasonable care to prevent and correct promptly any sexually harassing behavior, and the Plaintiff did not unreasonably fail to take advantage of preventing or corrective opportunities or avoid harm otherwise.

CONCLUSION AND PRAYER FOR RELIEF

Because the facts shown in the record indicate that the prima facie case has been established and that the Plaintiff performed her duty to take advantage of reasonable opportunities provided by the Defendant to address issues of discrimination—and the redress was insufficient—and because the Defendant can not establish an affirmative defense, we respectfully request this Court DENY the Defendant’s Motion for Summary Judgment and DENY the Defendant the use of the *Faragher-Ellerth* affirmative defense.

Respectfully submitted,

Competitors for Team Number E