

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 Neil A. Rombardo, Esq., Nev. Bar No. 6800
2 nrombardo@washoeschools.net
3 WASHOE COUNTY SCHOOL DISTRICT
4 P.O. Box 30425
5 Reno, NV 89520-3425
6 Telephone: 775-348-0300
7 Fax: 775-333-6010
8 Attorneys for Defendant Washoe County School District

9 UNITED STATES DISTRICT COURT
10 IN AND FOR THE DISTRICT OF NEVADA

11 VANESSA BOWIE-MIDDLETON,
12 Plaintiff,
13 vs.
14 WASHOE COUNTY SCHOOL DISTRICT,
15 Defendant.

CASE NO.: 3:24-cv-00320-ART-CLB

**MOTION TO DISMISS AMENDED
COMPLAINT WITH PREJUDICE**
[FRCP 12(b)(1) and 12(b)(6)]

16 Defendant, Washoe County School District, a political subdivision of the State of Nevada
17 (District), through counsel, move to dismiss with prejudice Plaintiffs' Amended Complaint (ECF
18 No. 7) pursuant to Federal Rules of Civil Procedure (FRCP or Rule) 12(b)(1) and 12(b)(6). This
19 Motion to Dismiss (Motion) is made and based on the foregoing rules, the pleadings with
20 attachments on file herein, the following memorandum of points and authorities and any matters
21 that may come before the Court for its consideration relative to this Motion.

22 ///

23 ///

24 ///

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

When the Court looks past the irrelevant and unrelated hyperbole of the Amended Complaint, it lays out a single claim: Disparate Treatment Based on Race, a Violation of Title VII.¹ In *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), the United States Supreme Court clarified the standard required of a pleading under Rule 8: a complaint may not plead conclusory allegations with no specific facts supporting the claims. Rather, to survive a motion to dismiss, a plaintiff must allege specific facts that enable the court to draw the plausible and reasonable inference that a defendant is liable for the misconduct alleged. A complaint that does nothing more than present “a sheer possibility that a defendant acted unlawfully” is subject to dismissal. *Iqbal*, 129 S. Ct. at 1949; *Twombly*, 550 U.S. at 556.

Plaintiff’s claim is not meritorious and is subject to dismissal as a matter of law for the following reasons:

- Plaintiff failed to exhaust her administrative remedies and as a result, this court lacks subject matter jurisdiction; and
- Plaintiff’s claim for disparate treatment fails under *Iqbal/Twombly* as Plaintiff failed to allege facts to allow the “reasonable inference” that she suffered disparate treatment because of her race.

II. STATEMENT OF FACTS

This Motion tests the legal sufficiency of the Amended Complaint (ECF No. 7). Therefore, this summary of facts is based solely on the allegations contained in the Amended Complaint and takes them as true. Defendant denies Plaintiff’s contention that it violated her

¹ See 42 U.S.C. § 2000e-2(a)(1); 42 U.S.C. § 2000e-2(k)(1)(A)(i); 28 U.S.C. §§ 1331, 1343, and 2201.

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 rights under federal law, and to the extent this case proceeds, Defendant will vigorously defend
2 this case.

3 Plaintiff is African American and currently employed by Defendant at Mendive Middle
4 School. ECF No. 7 at ¶ 3. Plaintiff began her employment with the District on September 14,
5 2024 as an on-call trainee Nutrition Worker. ECF No. 7 at ¶ 9. From October 12, 2019 until
6 September 11, 2020, Plaintiff worked as a Nutrition Worker I. ECF No. 7 at ¶ 10. From
7 September 12, 2020 until January 18, 2021, Plaintiff worked as a Nutrition Worker I at Bohach
8 Elementary School (Bohach) in Reno, Nevada. Terri Braunworth was the Kitchen Manager at
9 Bohach. ECF No. 7 at ¶ 11. On or about January of 2021, Plaintiff became the Kitchen Manager
10 at Bohach and remained the Kitchen Manager until January 27, 2023. ECF No. 7 at ¶ 13.

11 As the Kitchen Manager, Plaintiff alleges in part, that her job duties included ensuring the
12 safety of all students; participating when necessary in the discipline, warning, and reprimanding
13 of all misbehaving students in the cafeteria environs, and using the cafeteria public address (PA)
14 system to make announcements. ECF No. 7 at ¶ 15. Plaintiff was instructed by other managers
15 and nutrition service workers to keep order in the cafeteria and address misbehavior. ECF No. 7
16 at ¶¶ 17, 18, 19, 20. “See something, Say something” is the discipline policy. ECF No. 7 at ¶¶
17 18, 19. Heidi Gavrilles was the Principal of Bohach. ECF No. 7 at ¶ 27. The Amended Complaint
18 alleges that on or about January 27 or 28, 2022, Ms. Gavrilles told Plaintiff that she did not want
19 her disciplining students because white teachers were uncomfortable with Plaintiff, a black
20 woman, reprimanding students in the cafeteria. ECF No. 7 at ¶¶ 27 and 28. Ms. Gavrilles
21 allegedly also prohibited Plaintiff from using the PA system because her voice was offensive to
22 teachers. ECF No. 7 at ¶ 29.

23 Plaintiff is currently employed as a Nutrition Worker I at Mendive Middle School in
24 Sparks, Nevada. ECF No. 7 at ¶ 14.

1 **III. STANDARD OF REVIEW**

2 **A. Rule 12(b)(1) Lack of Subject Matter Jurisdiction.**

3 Rule 12(b)(1) allows a defendant to challenge the subject matter of the court through
 4 motion. “Federal Courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co.*
 5 *of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). “[D]istrict courts may not
 6 exercise jurisdiction absent a statutory basis.” *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435,
 7 437, 139 S.Ct. 1743, 204 L.Ed.2d (2019). Courts have an independent obligation to determine
 8 whether subject matter jurisdiction exists. *Ruhrgas v. Marathon Oil Co.*, 526 U.S. 574, 583, 119
 9 S.Ct. 1563, 143 L.Ed.2d 760 (1999). When a federal court concludes that it lacks subject matter
 10 jurisdiction, the court **must** dismiss the complaint in its entirety. (***Emphasis added.***) *Arbaugh v.*
 11 *Y&H Corp.* 546 U.S. 500, 514, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d 1097 (2006).

12 **B. Rule 12(b)(6) Failure to State a Claim Upon Which Relief Can Be Granted.**

13 Rule 12(b)(6) provides that a court must dismiss a complaint if it fails to state a claim
 14 upon which relief can be granted. The sufficiency of a complaint on a Rule 12(b)(6) motion to
 15 dismiss “presents the antecedent question of what a plaintiff must plead in order to state a
 16 claim[.]” *See Twombly*, 550 U.S. at 554-55. The “plausibility” standard, which the Supreme
 17 Court expounded in *Twombly* and reaffirmed in *Iqbal*, governs the pleading standard necessary
 18 to survive a motion to dismiss.

19 “To survive a motion to dismiss, a complaint must contain sufficient factual material,
 20 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 129 S. Ct. at 1949
 21 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads
 22 factual content that allows the court to draw the reasonable inference that the defendant is liable
 23 for the misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949.

24 ///

1 In turn, Rule 8(a)(2) “requires a short and plain statement of the claim showing that the
2 pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the...claim is and
3 the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quoting Rule 8(a)(2) and *Conley v.*
4 *Gibson*, 355 U.S. 41, 47 (1957)). Although Rule 8 does not require “detailed factual allegations,”
5 it demands more than the unadorned “the-defendant-unlawfully-harmed-me accusation.” *Iqbal*,
6 129 S. Ct. at 1949. It also demands more than “labels and conclusions,” “formulaic recitation of
7 the elements of a cause of action,” “‘naked assertion[s]’ devoid of ‘further factual enhancement,’”
8 or “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
9 statements.” *Id.* at 1949 (citing *Twombly*, 550 U.S. at 555, 557). The complaint must plead
10 sufficient factual context to cross the line from a “possibility” or the “conceivable” to the
11 “plausible.” *See Twombly*, 550 U.S. at 557, 570. As the Court previously recognized, on a motion
12 to dismiss “courts are not bound to accept as true a legal conclusion couched as a factual
13 allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986). *See also Sprewell v. Golden State*
14 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (stating that courts are not required to make
15 “unreasonable inferences” or “unwarranted deductions of fact” to save a complaint from a motion
16 to dismiss); *Anderson v. Clow*, 89 F.3d 1399, 1403 (9th Cir. 1996) (conclusory allegations of law
17 and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a
18 claim).

19 *Iqbal* provides a two-step approach for a Rule 12(b)(6) motion: First, “a court considering
20 a motion to dismiss can choose to begin by identifying pleadings that, because they are no more
21 than conclusions, are not entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950. Then, a
22 court must consider the factual allegations—if any—to “determine whether they plausibly give
23 rise to an entitlement of relief.” *Id.* at 1950. In short, a plaintiff must plead some factual content
24 to support the legal conclusions she ultimately seeks to establish. Where the well-pled facts “do

1 not permit the court to infer more than the mere possibility of misconduct, the complaint has
 2 alleged—but it has not ‘show[n]’—“that the pleader is entitled to relief,” *Iqbal*, 129 S. Ct. at
 3 1950, and the plaintiff’s complaint must be dismissed. *See id.*

4 IV. LEGAL ARGUMENT

5 A. Plaintiff’s Amended Complaint Fails to Offer Any Facts that She Exhausted Her 6 Administrative Remedies Under Title VII Warranting Dismissal by this Court for Lack of Subject Matter Jurisdiction.

7 “An attack on subject matter jurisdiction may be facial or factual. ‘In a facial attack, the
 8 challenger asserts that the allegations contained in a complaint are insufficient on their face to
 9 invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of
 10 the allegations that, by themselves, would otherwise invoke federal jurisdiction.’” *Edison v.*
 11 *United States*, 822 F.3d 510, 517 (9th Cir. 2016) quoting *Safe Air for Everyone v. Meyer*, 373 F.3d
 12 1035, 1039 (9th Cir.2004). “The district court resolves a facial attack as it would a motion to
 13 dismiss under Rule 12(b)(6): Accepting the plaintiff’s allegations as true and drawing all
 14 reasonable inferences in the plaintiff’s favor, the court determines whether the allegations are
 15 sufficient as a legal matter to invoke the court’s jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117,
 16 1121 (9th Cir. 2014) citing *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir.2013).

17 To establish federal subject matter jurisdiction over a Title VII claim, plaintiffs are
 18 required to exhaust their administrative remedies in a *timely manner*. *See* 42 U.S.C. § 2000e-
 19 5(b); *B.K.B. v. Maui Police Dep’t*, 276 F.3d 1091, 1099 (9th Cir.2002). “The party asserting
 20 jurisdiction has the burden of establishing jurisdiction.” *Burgess v. Westlake Financial*, No. 3:23-
 21 CV-00661-CSD, 2024 WL 2883399, at *2 (D. Nev. June 7, 2024) citing *Kokkonen v. Guardian*
 22 *Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391. Pursuant to Title VII
 23 and Nevada’s workshare agreement with the Equal Employment Opportunity Commission
 24 (EEOC), plaintiffs have 300 days after the alleged unlawful employment practice to file a claim

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 with the state agency (Nevada Equal Rights Commission (NERC)) or with the EEOC. *See* 42
2 U.S.C. §2000e-5(e)(1) (Title VII complainant must file EEOC charge no later than 180 days, or
3 authorized state or local agency charge no later than 300 days, after alleged unlawful practice
4 occurred); *see also* NRS 233.160; *Howe v. Washoe Cty. Sheriffs Off.*, 807 F. App'x 683, 684 (9th
5 Cir. 2020) (citations omitted) (the 300-day limit applies to all Title VII claims in Nevada,
6 regardless of whether such claims are filed with the state or the EEOC). *Mohasco Corp. v. Silver*,
7 447 U.S. 807, 814-17 (1980).

8 Here, the alleged act that gives rise to Plaintiff's cause of action occurred on or about
9 January 27, 2022 or January 28, 2022. ECF No. 7 at ¶ 27. Thus, Plaintiff must have filed her
10 charge of discrimination with either the EEOC or NERC on or before Thursday, November 24,
11 2022, and if she did not, this case must be dismissed by law. The Amended Complaint, however,
12 only states:

13 Plaintiff filed her charge of discrimination with the Nevada Equal Rights
14 Commission, received her Right to Sue letter, and timely filed her Complaint on July
23, 2024. She now amends her Complaint as a matter of right.

15 ECF No. 7 at ¶ 5. Even if the Court accepts as true that Plaintiff filed a charge of discrimination
16 with NERC and received a right to sue letter as plead, Plaintiff's Amended Complaint fails to
17 confer subject matter jurisdiction to this Court because, on its face, the statement is nothing more
18 than a legal conclusion without the necessary facts for this Court to determine whether it has
19 subject matter jurisdiction. For example, the Amended Complaint fails to provide facts related
20 to:

- 21 • *When* Plaintiff filed her charge of discrimination with NERC and whether it timely
22 from the date of the alleged incident(s) involved;

23 ///
24 ///

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

- 1 • *What* charge of discrimination did Plaintiff file with NERC and whether the
- 2 allegations in the charge of discrimination were the same as, or related to,
- 3 Plaintiff’s claims in the Amended Complaint;
- 4 • *Whether* Plaintiff gave NERC the opportunity to investigate the allegations in the
- 5 charge or if Plaintiff immediately requested a right to sue letter; and
- 6 • Other relevant information necessary to confer subject matter jurisdiction to this
- 7 Court.

8 Given the conclusory statement in the Amended Complaint related to exhaustion of administrative
9 remedies, without more, this Court cannot determine whether Plaintiff exhausted her
10 administrative remedies and, in kind, cannot determine whether it has subject matter jurisdiction.

11 Without enough information to make such a determination, the Amended Complaint fails on its
12 face to establish subject matter jurisdiction, and as a result, this Court lacks subject matter
13 jurisdiction and dismissal of the entire Amended Complaint is warranted. *Arbaugh v. Y&H Corp.*
14 546 U.S. 500, 514, 126 S. Ct. 1235, 1244, 163 L. Ed. 2d 1097 (2006) (Courts have an independent
15 obligation to determine whether subject-matter jurisdiction exists. When a federal court concludes
16 that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety.).

17 Plaintiff’s failure to plead any facts, other than bald assertions and conclusions, related to
18 the exhaustion of administrative remedies denies Defendant the opportunity to factually challenge
19 subject matter jurisdiction. For example, Plaintiff may not have timely filed her charge with
20 NERC, and/or timely filed this lawsuit after receiving her right to sue letter. Such failures warrant
21 dismissal. *See Leon v. Danaher Corp.* 474 F. App’x 591, 592 (9th Cir. 2012). Defendant reserves
22 the right to make a factual challenge to subject matter jurisdiction based on information that may
23 be provided in Plaintiff’s Opposition or Response to this Motion.

24 ///

1 **B. Plaintiff Fails to Allege Sufficient Facts to State a Plausible Claim for Disparate**
 2 **Treatment Based on Race.**

3 Notwithstanding Plaintiff’s failure to exhaust administrative remedies under Title VII,
 4 Plaintiff fails to allege sufficient facts to state a plausible claim for disparate treatment based on
 5 race. To state a *prima facie* claim of race-based discrimination under Title VII, Plaintiff must
 6 allege facts showing: (1) she belongs to a protected class; (2) she was performing according to
 7 Defendant’s legitimate expectations; (3) she suffered an adverse employment action because of
 8 her race; and (4) similarly situated individuals not in her protected class were treated more
 9 favorably. *See Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003). The Amended Complaint
 10 fails to set forth any factual allegations that satisfy the third element and fourth element.

11 Plaintiff’s Amended Complaint lacks any “factual content” to allow the Court to draw a
 12 “reasonable inference” that she suffered disparate treatment because of her race. *Iqbal*, 129 S.Ct.
 13 at 1949. While the Amended Complaint is full of labels and conclusions that Defendant subjected
 14 Plaintiff to “discrimination” and “adverse change in job description” there are no factual
 15 allegations that make it plausible she was discriminated against based on race. Plaintiff’s
 16 unrelated hyperbole and repetition of conclusory statements does not provide a sufficient factual
 17 basis to state a claim, and the Court need not accept these conclusory allegations as true. *Sprewell*
 18 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) *citing Clegg v. Cult Awareness*
 19 *Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

20 An adverse employment action is one that “materially affect[s] the compensation, terms,
 21 conditions, or privileges of ... employment.” *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th
 22 Cir. 2008) *quoting Chuang v. University of California Davis, Bd. of Trustees*, 225 F.3d 1115,
 23 1126 (9th Cir. 2000); *see also Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 818–19 (9th Cir. 2002).
 24 The Ninth Circuit has determined certain actions to be adverse. *See, e.g., Davis*, 520 F.3d at 1090

Washoe County School District
 Office of the General Counsel
 PO Box 30425
 Reno, Nevada 89520-3425
 Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 (holding that an employee's exclusion from an important area of the workplace, together with
 2 discriminatory allocation of hazardous work assignments, materially affected the terms and
 3 conditions of the plaintiff's employment); *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 818–19 (9th
 4 Cir.2002)(holding that assignment of more, or more burdensome, work responsibilities
 5 constitutes adverse employment action). The definition of adverse employment action does not
 6 extend, however, to rude or offensive comments or mere ostracism. *See Kortan v. Cal. Youth*
 7 *Auth.*, 217 F.3d 1104, 1112–13 (9th Cir.2000) (finding that the plaintiff did not suffer an adverse
 8 employment action when she was repeatedly mocked and treated with hostility).

9 Here, Plaintiff fails to provide facts that support she suffered a material adverse
 10 employment action. Plaintiff repeatedly concludes that her inability to discipline children is an
 11 adverse employment actions because it was a change in her job description, essential functions of
 12 her job, and/or a part of her responsibilities without any further facts. ECF No. 7 at ¶¶ 51, 74, 75,
 13 and 76. To begin with, neither the job description for Nutrition Service Worker I nor Kitchen
 14 Manager includes disciplining students as an essential function. (Attached **Exhibit 1** and **2**.)
 15 Further, Plaintiff remains employed by Defendant. The Amended Complaint fails to provide any
 16 facts that Defendant materially affected Plaintiff's employment. There are no allegations related
 17 to compensation, demotion, evaluation, discipline, terms, or benefits of her employment because,
 18 as the job descriptions clearly prove, disciplining children is not a part of her terms of
 19 employment.

20 Plaintiff further alleges that she is expected to discipline students because of the “See
 21 Something, Say Something” program, however, this is a bald conclusion without facts that the
 22

23 ² Considering the attached provisions of the job descriptions are appropriate in the Rule 12(b)(6) context
 24 because they is referenced and relied upon by Plaintiff in the Amended Complaint. *Parrino v. FHP.*, 146 F.3d 699,
 706 (9th Cir. 1998); Further, “[a] court may take judicial notice of matters of public record without converting a
 motion to dismiss into a motion for summary judgment.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999
 (9th Cir. 2018) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)).

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 Court must ignore under *Iqbal/Twombly* analysis. Plaintiff’s Amended Complaint states that
2 Defendant’s website mentions “See Something, Say Something” 522 times. ECF No. 7 at ¶ 19.
3 Yet, Plaintiff’s Amended Complaint fails to state what the “See Something, Say Something”
4 campaign is, says, or how it gives her authority to discipline children. To the contrary, “See
5 Something, Say Something” is not a discipline policy at all. The “See Something, Say
6 Something” campaign is part of a broader effort to ensure student safety by encouraging vigilance
7 and *prompt reporting* of suspicious behaviors or threats – not disciplining students. The initiative
8 emphasizes the importance of students, staff, and community members being proactive in
9 preventing potential incidents, such as violence, by speaking up when they observe something
10 concerning. This concept aligns with national campaigns like the Department of Homeland
11 Security’s program that focuses on reporting signs of terrorism or crime, and the “Say Something”
12 program by Sandy Hook Promise, which provides anonymous reporting systems for students to
13 share concerns about mental health or safety risks.³ As a result, Plaintiff fails to properly plead
14 the third element of racial discrimination. Accordingly, the entire Amended Complaint should
15 be dismissed with prejudice on the pleading standards alone because, as the Supreme Court
16 recognized in *Twombly* and *Iqbal*, this sort of “an ‘unadorned, the-defendant-unlawfully-harmed-
17 me accusation,’” is not sufficient to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678 (quoting
18 *Twombly*, 550 U.S. at 555).

19 Plaintiff also fails to satisfy the fourth element. Plaintiff’s Amended Complaint does not
20 identify any specific individuals outside Plaintiff’s protected class who were treated differently
21 in similar circumstances. Instead, Plaintiff offers only conclusory allegations that others were
22 treated more favorably. For example, Plaintiff concludes that other teachers and kitchen staff
23

24 ³ <https://www.dhs.gov/see-something-say-something>

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1 disciplined students. ECF No. 7 at ¶ 21. Teachers are not similarly situated to Plaintiff, and to
2 the extent other kitchen staff are similarly situated, this is a bald conclusion by Plaintiff without
3 facts to support the conclusion. Plaintiff also alleges that she “understood,” not that it was a fact
4 or what occurred, but that it was her subjective understanding that a single white employee, Ms.
5 Firth, could discipline students. ECF No. 7 ¶ 36. Plaintiff’s understanding is not a fact, it is her
6 subjective belief. Ms. Firth is believed to be a Nutrition Worker, and as previously stated *above*,
7 Nutrition Worker’s do not have discipline in their job descriptions. (**Exhibit 1.**) Under *Iqbal* and
8 *Twombly*, such bare assertions devoid of factual support are insufficient to state a plausible claim
9 for relief. To survive dismissal, Plaintiff must provide more than a “sheer possibility” that
10 Defendant acted unlawfully. *Iqbal*, 556 U.S. at 678. Without factual allegations regarding
11 similarly situated employees outside her protected class, the claim of disparate treatment is
12 speculative and not plausible on its face. Thus, dismissal is appropriate.

13 **V. CONCLUSION**

14 For the foregoing reasons, Defendant respectfully requests the Court dismiss Plaintiff’s
15 Amended Complaint in its entirety with prejudice.

16 DATED this 14th day of October, 2024.

17 WASHOE COUNTY SCHOOL DISTRICT
18 OFFICE OF THE GENERAL COUNSEL

19 By: /s/Neil A. Rombardo, Esq.
20 NEIL A. ROMBARDO, ESQ., Nev. Bar No. 6800
21 P.O. Box 30425
22 Reno, NV 89520-3425

23 Attorney for Defendant
24 WASHOE COUNTY SCHOOL DISTRICT

Washoe County School District
Office of the General Counsel
PO Box 30425
Reno, Nevada 89520-3425
Telephone: (775) 348-0300; Facsimile: (775) 333-6010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the WASHOE COUNTY SCHOOL DISTRICT OFFICE OF THE GENERAL COUNSEL and that on this date I served a true and correct copy of the preceding document addressed to the following:

Terri Keyser Cooper
Law Office of Terri Keyser Cooper
125 Edgewater Parkway
Reno, NV 89519
keysercooper@lawyer.com
Attorney for Plaintiff

by electronically filing the foregoing document with the Clerk of the Court which served Ms. Keyser Cooper electronically.

DATED this 14th day of October, 2024.

/s/Breanne Read
Breanne Read

EXHIBIT INDEX

Exhibit No.	Exhibit Name	No. of Pages (including cover sheet)
1.	Nutrition Service Worker I Job Description	4
2.	Kitchen Manager Job Description	4

EXHIBIT 1

EXHIBIT 1



Washoe County School District
Every Child, By Name And Face, To GraduationSM

NUTRITION SERVICES WORKER

Grade:	15	Number of Days:	varies
Employee Type:	Educational Support Professional	Job Code:	5119 5124 (on-call)
Reports To:	Nutrition Services Administration		
Office/Department:	Nutrition Services		

SUMMARY DESCRIPTION

Under supervision, the Nutrition Services Worker, assists in preparing and serving meals for breakfast, lunch and a la carte menus. The Nutrition Services Rover Worker will work under supervision of the Nutrition Services Coordinator. May be assigned to a school site or N.S. (Nutrition Services) Central Kitchen.

ESSENTIAL DUTIES & RESPONSIBILITIES

- Prepares food for student meal service, prepackaging, and/or line service.
- Data input at point of sale modules and food service computer programs.
- Practice proper food safety and sanitation as per Washoe County Health Department and Washoe County School District Nutrition Services.
- Operates, maintains and cleans commercial kitchen equipment, such as mixers, grinders, slicers, griddles, fryers, dishwashers and ovens.
- Fills containers and dispensers.
- Sets-up serving equipment, containers and carts with dishes, utensils, and food.
- Cleans tables, counters, serving trays, washes dishes, pots and pans.
- Takes and records food and equipment temperatures, maintains sanitary and safe work environment.
- Identifies and serves a reimbursable meal as defined by the USDA child nutrition program as a unit to each student.
- Receives and stocks groceries and supplies.
- Performs a variety of food preparation activities, such as washing, chopping, grating, slicing, baking and frying food.
- Prepares, sets-up and serves breakfast, lunch and a la carte.
- Operates cash registers or computerized point of sale units.
- Works collaboratively with kitchen site team, administrators and teachers.
- Provides training to new NS Trainees, and assist in training student workers.
- May measure / mix ingredients for recipes.
- May be required to work on automated packaging line.
- May supervise and assign duties to student workers.
- May be required to take over the operations of the kitchen in the absence of the manager.
- May collect money and reconciliation of daily sales.
- May be required to assist with food preparation for special functions such as banquets, barbecues, and field trips.
- Performs other duties as assigned.

When assigned to the Distance Learning & Distribution Team:



Washoe County School District
Every Child, By Name And Face, To GraduationSM

Prepares and packs distance learning meal boxes at the Nutrition Services center for distribution, ensuring each box meets USDA child nutrition meal pattern and menu requirements. Works on building boxes within the warehouse, and may be required to work a flexible schedule at each of the meal distribution sites handing out meal boxes to families as needed.

MINIMUM QUALIFICATIONS

Education/Experience: Any combination of education/experience that could likely provide the required knowledge in qualifying. A typical way to obtain the knowledge and skills would be:

Experience: Six (6) months to one (1) year of preparing and serving food; institutional food service experience is desired. Completion of a two (2) hour Safeschools course is required within the first year of employment.

Licenses/Certificates: None.

OTHER JOB REQUIREMENTS

- May be temporarily or permanently reassigned to a different location dependent upon department needs.
- When assigned as a Nutrition Services Roving Worker, will be required to travel to any assigned site within the boundaries of WCSD and work a flexible schedule.

PREFERRED QUALIFICATIONS

None.

COMPETENCIES FOR SUCCESSFUL PERFORMANCE OF JOB DUTIES

Knowledge of/ Skill in/Ability to:

- Practice proper food safety and sanitation as per Washoe County Health Department and Washoe County School District Nutrition Services. Follow Nutrition Services regulations, policies, and practices as trained to do so.
- Maintain personal cleanliness and appearance appropriate for food handlers.
- Reading, writing, and basic math.
- Basic food preparation, safe working practices, sanitary food handling and storage techniques.
- Operate commercial kitchen equipment.
- Operate commercial packaging equipment.
- Operate cooking and food preparation equipment.
- Follow basic recipe instructions.
- Communicate effectively with others and work as part of a team that serves the needs of students.

WORK ENVIRONMENT/CONDITIONS

The work environment and exposures described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The work involves moderate risks or discomforts that require special safety precautions, e.g., working around moving parts, carts, or machines; exposure to contagious diseases or irritant chemicals. Employees may be required to use protective clothing or gear, such as masks, gowns, coats, boots, goggles, gloves, or shields.



Washoe County School District

Every Child, By Name And Face, To GraduationSM

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The work requires some physical exertion, such as long periods of standing; recurring bending, crouching, stooping, stretching, reaching, or similar activities; or recurring lifting or moderately heavy items. Must be able to bend, lift weight above shoulders, stand for extended periods and ability to work on your feet up to eight (8) hours. The work may require specific, but common, physical characteristics and abilities, such as above average agility and dexterity. Must be able to lift and carry up to 40 pounds.

THIS JOB SPECIFICATION SHOULD NOT BE CONSTRUED TO IMPLY THAT THESE REQUIREMENTS ARE THE EXCLUSIVE STANDARDS OF THE POSITION. INCUMBENTS MAY BE REQUIRED TO FOLLOW ANY OTHER INSTRUCTIONS, AND TO PERFORM ANY OTHER RELATED DUTIES AS MAY BE REQUIRED BY THEIR SUPERVISOR.

The Washoe County School District is committed to providing a safe and respectful learning and working environment for all students, staff, and visitors. The District prohibits bullying, cyber-bullying, harassment, sexual harassment, and/or discrimination based on an individual's actual or perceived race, color, religion, sex (including pregnancy), national origin, age, sexual orientation, gender identity or expression, genetic information, veterans or military status, marital status, disability or the presence of any sensory, physical or mental handicap in any of its educational programs/activities and employment, or in any program or activity conducted or funded by the U.S. Department of Agriculture. The District prohibits discrimination against any youth group listed in Title 36, as a patriotic society, (i.e. Boy Scouts of America) from access to public school facilities use.

Date created:	July 1988
Last review date:	November 2020
Next review date:	November 2021

EXHIBIT 2

EXHIBIT 2



NUTRITION SERVICES ELEMENTARY MANAGER

SUMMARY DESCRIPTION

Under supervision, supervise employees and coordinate food service operations within facility, including assign duties, food preparation, service, and clean-up. Assist in preparing and serving meals for breakfast, hot lunch and a la carte menus. Order, receive and store food and supplies, collect payments, prepare bank deposits. Maintain operation reports and employee records. Incumbent performs related work as required.

DISTINGUISHING CHARACTERISTICS

The Nutrition Services Elementary Manager may be required to serve breakfast and/or lunch meal service, as Program needs dictate. Oversee food service operations within a facility serving meals. Duties include ordering and receiving food and supplies within the scope of an established computer inventory program, collecting and recording payments, computer data input, preparing and making bank deposits. Supervises Worker I, and oversee activities of student workers. Provides training to new staff; upholds standards of staff and promotes a cohesive team environment. Works collaboratively with site administrators, teachers and parents.

EXEMPLARY DUTIES/RESPONSIBILITIES

Manage the operation of an elementary kitchen; supervise, coordinate, and assist employees in a variety of food preparation activities by following a specified menu; supervise and assist in serving meals and facility clean-up; assign, train, direct, and review the work of assigned personnel and student workers; train designated Worker I to run the kitchen in the absence of the Manager; establishes operational priorities on a daily basis; completes evaluations for subordinates; operates, cleans, and maintains commercial kitchen equipment, to include ovens, warmers, dishwashers, freezers, refrigerators, milk coolers, microwaves, etc; set up serving lines, containers and carts with dishes, utensils, and food; cleans tables, counters, carts, sinks, serving trays, washes dishes, serving containers, etc; maintains sanitary and safe work environment; maintain detailed and/or confidential records, number of meals served, employee attendance, time sheets, invoices, logs, student lunch eligibility, etc.; prepares and deposits monies received; determines the quantity of food and supplies required; prepares food orders on the computer; takes and records perpetual inventory utilizing a computerized system, takes and records food and equipment temperatures; receives and stocks groceries and supplies by established procedures; performs a variety of food preparation activities; operate computer and cash drawer; collect payments and pre-payments for meals, reconcile daily cash sales; identify and serve a reimbursable meal as defined by the USDA child nutrition program as a unit to each student. May be required to work on automatic packaging line, assist with food preparation for special functions such as banquets, barbecues, and field trips, travel to another school site to work, or be re-assigned to another site, dependent on program needs; practice and ensure proper food safety and sanitation is observed, as per Washoe County Health Department and Washoe County School District Nutrition Services; and maintain personal cleanliness and appearance appropriate for food handlers.



Must be able to bend, lift weight above shoulders, stand for extended periods and ability to work on your feet up to eight (8) hours.

Must be able to lift and carry up to 40 pounds, following WCSD and Nutrition Services safety standards.

EMPLOYMENT STANDARDS

Experience/Education: Any combination of education and experience that could likely provide the required knowledge and skills is qualifying. A typical way to obtain the knowledge and experience would be:

1. Six (6) months to one (1) year of preparing and serving food; institutional food service experience is desired. Completion of a two (2) hour Safeschools course is required within the first year of employment.

Knowledge of: Reading, writing in English and business math; food preparation techniques as applied to institutional school food preparation; established USDA guidelines concerning nutritional requirements for school breakfast/lunch programs; money handling; supervisory techniques.

Skill at and Ability to: Read, write, follow and execute verbal and written instructions in English; complete reports, maintain perpetual inventory and communications via a computer; plan and schedule food preparation activities adhering to recipe and menu standards, plan and schedule personnel for maximum effectiveness and efficiency; supervise and train subordinates; recover service issues with corrective actions; establish and maintain working relationships with others contacted in the course of performing assigned duties; work as part of a team that serves the needs of students; maintain accurate and detailed statistical and/or confidential records and documentation; lift/carry up to 40 lbs, ie., cases of fresh fruit, large or heavy objects; operate cooking and food preparation equipment; food preparation.

Licenses/Certificates: Possession of, or ability to obtain a Servsafe Certificate within 60 days from date of hire, and ability to maintain that certification as mandated by the Washoe County Health Department.

THIS JOB DESCRIPTION IS NOT A COMPLETE STATEMENT OF ESSENTIAL FUNCTIONS, RESPONSIBILITIES OR REQUIREMENTS. REQUIREMENTS ARE REPRESENTATIVE OF THE MINIMUM LEVEL OF KNOWLEDGE, SKILL AND/OR ABILITIES. MANAGEMENT RETAINS THE DISCRETION TO ADD OR CHANGE TYPICAL DUTIES OF A POSITION AT ANY TIME.

The Washoe County School District is committed to providing a safe and respectful learning and working environment for all students, staff, and visitors. The District prohibits bullying, cyber-bullying, harassment, sexual harassment, and/or discrimination based on an individual's actual or perceived race, color, religion, sex (including pregnancy), national origin, age, sexual orientation, gender identity or expression, genetic information, veterans or military status,



marital status, disability or the presence of any sensory, physical or mental handicap in any of its educational programs/activities and employment, or in any program or activity conducted or funded by the U.S. Department of Agriculture. The District prohibits discrimination against any youth group listed in Title 36, as a patriotic society, (i.e. Boy Scouts of America) from access to public school facilities use.

NUTRITION SERVICES ELEMENTARY MANAGER

Grade: 16
Job Code: 5123
Educational Support Professional
WESP
Last Reviewed: January 2017
Next Review: January 2020
OPR: NUTRITION SERVICES COORDINATOR