At a Term of the Supreme Court of the State of New York held in and for the County of Onondaga at the Onondaga County Courthouse, Syracuse, New York, on the 10th day of February, 2021.

PRESENT: HON. GERARD J. NERI, J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

JOSEPH SINDONI,

Plaintiff,

-against-

BOARD OF EDUCATION OF SKANEATELES CENTRAL SCHOOL DISTRICT, and THE SKANEATELES CENTRAL SCHOOL DISTRICT,

Defendants.

DECISION and ORDER
Index No. 000895/2021

On February 1, 2021, Plaintiff filed a Complaint (NYSCEF Doc. No. 2) and proposed order to show cause seeking certain relief. On February 2, 2021, the Court signed the proposed order to show cause, requiring the Defendants to be served on or before February 4, 2021, that the Defendants answer on or before February 8, 2021, that any reply be filed on or before February 9, 2021, and that the Parties appear virtually on February 10, 2021 (NYSCEF Doc. No. 10). Plaintiff filed his affidavits of service (NYSCEF Docs. No. 11-13). On February 5, 2021, Plaintiff filed an Amended Complaint (NYSCEF Doc. No. 14). On February 8, 2021, Defendants filed their opposition papers (NYSCEF Docs. No. 17 *et seq.*)

Plaintiff alleges in the Amended Complaint that he was employed by Defendant Skaneateles Central School District ("SCSD" or the "District) as a varsity football coach for the past nine years, excepting 2013 and 2014, and was head coach for seven of those years (Complaint, NYSCEF Doc. No. 14, para. 9). Plaintiff alleges it was known that the 2020-2021

scholastic football season would be moved from Fall 2020 to Spring 2021 (*ibid* at para. 11). During November 2020, Plaintiff coordinated limited practices and intramural competitions for the SCSD varsity football team with the SCSD Director of Student Wellness Activities and Athletics, Stephen Musso ("Musso"), and District facilities were utilized for such events (*ibid* at para. 12).

Plaintiff alleges that he learned shortly before Thanksgiving 2020 that certain SCSD student varsity football players planned to play a pickup game of football at the SCSD high school football field and called the game the "Turkey Bowl" (*ibid* at para. 13). Plaintiff alleges the players were going to observe COVID-19 precautions (*ibid*). Plaintiff states he did not organize or promote the Turkey Bowl, but he attended to ensure there was adult supervision of the event and COVID-19 precautions were observed (*ibid*). Plaintiff alleges SCSD permitted the use of its facilities by members of the public as well as students (*ibid* at para. 14). Plaintiff further states that he conducted a football camp in Summer 2020 on SCSD grounds, that modified football games occurred on SCSD grounds in Fall 2020, and that SCSD did not have any published policy, rule, or regulation prohibiting the use of SCSD facilities (*ibid* at para. 15). Plaintiff alleges that other student athletic groups have used SCSD facilities without the proper observance of COVID-19 precautions, and that to Plaintiff's knowledge, there has been no adverse consequences to the coaches of those teams (*ibid* at para. 16).

Plaintiff states that those present at the Turkey Bowl wore facemasks and observed social distancing (*ibid* at para. 17). On or about December 2, 2020, an article published on www.syracuse.com appeared and quoted SCSD Superintendent Eric Knuth ("Knuth") as stating that SCSD was investigating "allegations of unauthorized activity that occurred on school grounds" over the Thanksgiving break (Amended Complaint, NYSCEF Doc. No. 14, *see also*

Article, NYSCEF Doc. No. 3). Plaintiff alleges that after the article was published he made multiple attempts at contacting Knuth to explain that Plaintiff did not organize or promote the event, that he attended to ensure there was adult supervision and compliance with COVID-19 protocols, and his observations that such protocols were followed (Amended Complaint, NYSCEF Doc. No. 14, para. 19). Plaintiff states that Knuth did not respond to Plaintiff's calls and that Knuth only contacted Plaintiff after the SCSD Board of Education (the "Board") purportedly terminated Plaintiff's employment (*ibid*).

Plaintiff alleges that Musso informed the Onondaga County Department of Health (the "Department of Health") about the Turkey Bowl, provided a list of students involved, and requested the Department of Health "take enforcement action against the students and/or Sindoni", alleging that the individuals had violated State and/or County laws concerning COVID-19 (*ibid* at para. 20). Plaintiff alleges the Department of Health has not taken any action because there were no violations of State and/or County laws concerning COVID-19 (*ibid*).

On January 5, 2021, the Board conducted a public meeting by video conference. Plaintiff alleges that at "the outset of the public meeting, the Board's vice-president, Michael Krell, announced that the Board had 'just returned back from executive session under Public Officers Law Article 7, Section 105, and Board Policy 1525 to discuss matters leading to the appointment, employment, promotion, demotion, discipline suspension, dismissal, or removal of a particular person, and now, here we are in regular session'" (*ibid* at para. 21). Plaintiff states that after Krell's statement, the Board recited the pledge of allegiance and began its public meeting (*ibid*). Plaintiff states that at no time during the public session did any member of the Board move to adjourn to an executive session, nor did the Board vote to adjourn to executive session (*ibid* at para. 22). Plaintiff alleges the executive session was illegal because it was not

authorized by a motion of a member during a public meeting for one of the specified reasons identified in Public Officers Law §105 (*ibid* at para. 23). Plaintiff further states that the alleged vote terminating Plaintiff's employment which took place during the executive session was similarly illegal (*ibid* at para. 24).

Plaintiff alleges that Knuth told the Board that Plaintiff had organized the Turkey Bowl and that no COVID-19 precautions were taken (*ibid* at para. 25). Plaintiff alleges the Board acted solely on Knuth's representations and not on any facts or evidence (*ibid*). Plaintiff alleges that on January 15, 2021 Musso telephoned Plaintiff and advised him that the Board voted to discontinue Plaintiff's employment with SCSD because of Plaintiff's involvement with the Turkey Bowl (*ibid* at para. 27). Plaintiff alleges he told Musso that Musso and the Board did not know what involvement Plaintiff had with the Turkey Bowl as neither had asked Plaintiff (*ibid*). To this, Plaintiff alleges Musso responded "it doesn't matter. The Board has decided and its done" (*ibid*).

Plaintiff alleges that Knuth during a telephone call between Knuth and Plaintiff, that Knuth told Plaintiff that the Board terminated Plaintiff's employment because Plaintiff organized and was present at the Turkey Bowl, and that Plaintiff was to be held to a "higher standard" (*ibid* at para. 28). In a subsequent telephone call on January 25, 2021, Plaintiff alleges that Knuth offered to let Plaintiff resign in lieu of termination and that Plaintiff declined (*ibid*). Knuth then told Plaintiff that he was effectively terminated and that Plaintiff would no longer be allowed to coach for SCSD (*ibid*).

On January 25, 2021, Knuth published a letter to the community advising that SCSD made a personnel change due to "events that transpired over Thanksgiving break" (Amended Complaint, NYSCEF Doc. No. 14, para. 29; *see also* Knuth Letter, NYSCEF Doc. No. 4).

Knuth further stated: "These gatherings jeopardized the safety of students, faculty, and staff and contributed to conditions that eliminated our ability to provide continuous in-person instruction" (Knuth Letter, NYSCEF Doc. No. 4). Plaintiff alleges that the Knuth Letter and SCSD's termination of Plaintiff's employment resulted in people concluding that it was Plaintiff who failed to follow required COVID-19 protocols, exposing Plaintiff to ridicule and condemnation, damaging Plaintiff's standing and reputation in the community (Amended Complaint, NYSCEF Doc. No. 14, para. 30). Plaintiff states that he is also a personal wealth management advisor and that some of his clients have read the Knuth Letter and believe that Plaintiff "recklessly exposed students to transmission of the virus by organizing the Thanksgiving football game" (*ibid* at para. 31).

Plaintiff seeks an order of this Court: 1) granting a temporary restraining order directing the Board to reinstate Plaintiff to his position as the SCSD varsity high school football coach and prohibiting the termination of his employment in that position unless and until the Board has provided Plaintiff with a constitutionally sufficient opportunity to be heard concerning the allegations on which the purported termination was based; 2) declaring that the executive session conducted by the Board prior to the January 5, 221 public meeting to be in violation of Public Officers Law §100, *et seq.*, and any action taken during said executive session a nullity; 3) granting Plaintiff attorneys' fees and costs related to this action; and 4) such other and further relief as this Court deems just and proper.

Plaintiff notes the Open Meeting Law ("OML") requires local government bodies to provide the public with specified notice of public meetings, conduct their meetings at locations and in a manner that facilitates public observation of deliberations, votes, and official actions, and maintain accurate records of official actions and deliberations conducted during such

meetings (*see* Public Officers Law §§103-104). Local governing bodies may enter executive sessions for a limited number of purposes (*see* Public Officers Law §105). "[W]hile a motion to go into executive session must identify the general area to be considered, it is insufficient to "merely regurgitate the statutory language...this boiler plate recitation does not comply with the intent of the statute" (Matter of Zehner v Bd. of Educ. of the Jordan-Elbridge Cent. Sch. Dist., 31 Misc 3d 1218[A], 1218A, 2011 NY Slip Op 50720[U], [Sup Ct, Onondaga County 2011], *citations omitted*). The New York State Department of State, Committee on Open Government has opined: "a public body cannot in my view schedule an executive session in advance of a meeting. In short, because a vote to enter into an executive session must be made and carried by a majority vote of the total membership during an open meeting, technically, it cannot be known in advance of that vote that the motion will indeed be approved" (OML-AO-2408). Plaintiff also notes that Education Law §1708(3) similarly permits a school board to enter into executive session for a limit number of purposes, but requires official action to happen in a public meeting (*see* Kursch v. Bd. of Educ., 7 A.D.2d 922 [Second Dept. 1959]).

Plaintiff notes that the Board's actions were contrary to the Open Meetings Law. The Board failed to convene its public meeting on January 5, 2021, failed to properly identify the reason for entering an executive session, and ultimately met outside of the public. On this basis alone, Plaintiff asserts the meeting must be invalidated along with any actions taken therein.

Plaintiff notes that pursuant to CPLR §6301, "[a] preliminary injunction may be granted… in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action would produce injury to the plaintiffs" (*see* Times Sq. Books, Inc. v. City of Rochester, 223 A.D.2d 278, 278 [Fourth Dept. 1996]). Plaintiff asserts

he has demonstrated a likelihood of success on the merits, including his U.S.C. §1983 stigma-plus action. Plaintiff asserts: "Under the stigma-plus doctrine, a public employer adversely impacts a public employee's liberty interest when it publishes stigmatizing statements about that employee in the course of the employee's termination" (*see* Memorandum of Law, NYSCEF Doc. No. 8, p. 13). "If a plaintiff successfully proves his stigma-plus claim, due process requires that as a remedy he be given a post-deprivation opportunity to clear his name" (Patterson v. City of Utica, 370 F.3d 322, 330 [2d Cir. 2004]). Plaintiff alleges that the Knuth Letter (NYSCEF Doc. No. 4) stating there was a personnel change due to the Turkey Bowl and allegedly exposing students to COVID-19 is a sufficient basis for his stigma-plus claim. Therefore, Plaintiff asserts he is entitled to a name-clearing hearing.

Plaintiff asserts he will suffer irreparable harm without the temporary injunction. Plaintiff asserts injury to one's reputation may constitute irreparable harm (*see* Destiny USA Holdings, LLC v. Citigroup Global Markets Realty Corp., 69 A.D.3d 212, 222 [Fourth Dept. 2009]). Plaintiff has asserted that members of the public have confronted him as a result of the Knuth Letter. Without the name-clearing hearing, he asserts his business as a personal wealth management advisor will suffer.

Plaintiff asserts a balance of the equities weigh in his favor. Plaintiff asserts there will be no harm to SCSD by continuing to employ him, as evidenced by his several years of prior service. Plaintiff argues: "The requested injunctive relief would only require the District to do what it should have done in the first instance: continue Sindoni's employment until the District has provided him with adequate notice of any charges and allegation asserted against him and provide him with a constitutionally adequate opportunity to respond and be heard in regard to

any such charges or allegation" (Memorandum of Law, NYSCEF Doc. No. 8, p. 16). Plaintiff reiterates his prayer for relief.

The Defendants oppose the relief sought. Defendants dispute some of the factual allegations Plaintiff made. District Superintendent Eric Knuth first notes that there was nothing to terminate Sindoni from as he was not appointed for the 2020-2021 school year (*see* Knuth Affidavit, NYSCEF Doc. No. 18, paras. 3-5). Knuth further states that the State had certain guidelines for athletics which prevented the school from allowing football to be played (*ibid* at paras. 6-8). Plaintiff was allowed to run football camps on Defendants' facilities as an "outside organization" (*ibid* at para. 9). Defendants assert that the District received notification of 38 positive COVID-19 cases and over 100 quarantine orders following the Thanksgiving break (*ibid* at para. 19). Defendants allege that two former students and four current students who participated in the Turkey Bowl tested positive for COVID-19 (*ibid* at para. 20). Defendants further assert that Plaintiff had a history of disregarding rules and regulations designed to protect the health and safety of students" (*ibid* at para. 24; *see also* 2019 Evaluation and 2018 Memo, NYSCEF Docs. No. 29 & 30). Knuth reiterates that Plaintiff's appointment had naturally expired so no Board action was necessary to remove or terminate Plaintiff (Knuth Affidavit, NYSCEF Doc. No. 18, para. 33). Knuth states that Plaintiff acknowledged that coaching appointments were annual appointments (*ibid* at para. 39). Knuth states he only issued his letter after Musso and his family received threats (*ibid* at para. 41).

Musso asserts that Plaintiff had a pattern of behavior "that disregarded rules protecting the health and safety of District students" (Musso Affidavit, NYSCEF Doc. No. 32, para. 7). Musso disputes the characterization of his conversation with Plaintiff, stating Plaintiff would not be reappointed (*ibid* at para. 12). Musso states that as the Plaintiff cut off the phone call, Musso

was unable to express concerns with previous instances of disregarding rules and cooperation with the administration (*ibid* at para. 18).

Defendants assert that board meetings held for the purpose of seeking legal advice are exempt from the Open Meetings Law, citing Public Officers Law §108(3). The pertinent section states: "Nothing contained in this article shall be construed as extending the provisions hereof to: (3) any matter made confidential by federal or state law" (Public Officers Law §108). Defendants assert the discussions regarding Plaintiff's potential reappointment were properly conducted in the executive session.

Defendants assert that the Board properly entered executive session as evidenced by the minutes of the meeting (January 5, 2021 Minutes, NYSCEF Doc. No. 31). Defendants note that even if the executive session was improperly conducted, the remedies are limited to voiding the action taken and/or requiring the members of the Board to take training (*see* Public Officers Law §107). However, Defendants state the violation was ministerial and caused no actual harm and can be corrected without an order of the Court (*see* Memorandum of Law, NYSCEF Doc. No. 17, p. 4).

Defendants are adamant in stating that no further relief is available as Plaintiff was not terminated as he was yet to be appointed for the 2020-2021 season (*ibid*). As no action was taken, Defendants state that it would be improper to grant attorneys' fees. Public Officers Law §107 states in pertinent part:

> "In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party. If a court determines that a vote was taken in material violation of this article, or that substantial deliberations relating thereto occurred in private prior to such vote, the court shall award costs and reasonable attorney's fees to the successful petitioner, unless there was a reasonable basis for a public body to believe that a closed session could properly have been held" (Public Officers Law §107).

Defendants reiterate no vote was taken during the executive session and the deliberation held therein were proper (Memorandum of Law, NYSCEF Doc. No. 17, p. 4).

Defendants assert Plaintiff cannot demonstrate a likelihood of success on his claims for reappointment or his §1983 relief. Defendants assert that the right to a name-clearing hearing does not equal a right to employment (*see* Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623 [2d Cir. 1996]). Further, Defendants assert Plaintiff must "contest the truth of the allegedly stigmatizing statements because… the purpose of a name clearing hearing is to give the allegedly stigmatized employee an opportunity to refute the government's stigmatizing charges" (Memorandum of Law, NYSCEF Doc. No. 17, p. 7, *citing* O'Neil v. City of Auburn, 23 F.3d 685, 693 [2d Cir. 1994]). Defendants assert that Plaintiff was at the Turkey Bowl, failed to report the Turkey Bowl before and only reported the Turkey Bowl subsequent to public reporting of the event, and that the participants, not the District or its employees released information regarding the Turkey Bowl. Further, the District only reacted to complaints from the community made about the Turkey Bowl. Defendants conclude that Plaintiff cannot sustain his burden of establishing that the statements which were made by the District "foreclosed him from any future employment" (Kirby v. Yonkers City School District, 767 F. Supp. 2d 452, 464 [S.D.N.Y.2001]).

On February 9, 2021, Plaintiff submitted his reply. Plaintiff notes that Defendants misconstrue the Open Meetings Law argument and state Plaintiff does not allege that the Board may meet in executive session with their counsel. Plaintiff simply opposes the illegal nature of the Board entering executive session, regardless of the session's purpose. Plaintiff further argues that any decisions by the Board regarding Plaintiff's employment must be made in an open meeting.

Plaintiff argues the Defendants' position regarding his employment status belies the District's course of conduct with Sindoni. Specifically, Knuth stated "[Sindoni] was the students' coach and he was there sanctioning the event" (*see* Knuth Affidavit, NYSCEF Doc. No. 18, para. 37). Defendant's have not disputed Knuth's offer to let Plaintiff resign (*see* Amended Complaint, NYSCEF Doc. No. 14, para. 28; *see also* Knuth Affidavit, NYSCEF Doc. No. 18, para. 39). Plaintiff had a District-issued key fob permitting access to District facilities (Knuth Affidavit, NYSCEF Doc. No. 18, para. 16). Plaintiff also alleges that the District specifically sanctioned the 7-on-7 scrimmages Plaintiff organized for students (*see* Sindoni Reply Affidavit, NYSCEF Doc. No. 40, para. 12). Plaintiff alleges this course of conduct demonstrates he was an employee of the District. Plaintiff prays that the Court grant the temporary restraining order as he has demonstrated a likelihood of success on his Open Meetings Law and his stigma-plus claims.

Oral arguments were held February 10, 2021, whereat the Parties reiterated their points. The Court invited the Parties to submit supplemental papers on or before February 12, 2021.

On February 12, 2021, Defendants filed supplemental papers (NYSCEF Doc. Nos. 56-59). Defendants assert that the executive session was proper as a quorum passed a motion to enter the executive session (Attorney Letter, NYSCEF Doc. No. 56). Defendants stress that the purpose of the January 5, 2021 meeting of Board members with counsel is exempt from the Open Meetings Law and that there was no need to enter an executive session (*ibid*). Defendants further reiterate that Plaintiff's appointment had expired and that there was nothing to terminate Plaintiff from (*ibid*). Finally, Defendants assert Plaintiff's damage, if any, would solely be economic and therefore not a basis for injunctive relief (*see generally* Credit Index, L.L.C. v. RiskWise Intl., L.L.C., 282 A.D.2d 246, 247 [First Dept. 2001], "Plaintiff has, in addition, failed

to demonstrate that its potential damages are not compensable in money and capable of calculation and, thus, that it will suffer irreparable harm absent the requested injunction"). Defendants also provided the list of coaching appointments made at the September 15, 2020 Board meeting, which did not include Plaintiff (NYSCEF Doc. No. 59).

On February 12, 2021, Plaintiff filed his supplemental papers (NYSCEF Doc. Nos. 60-67). Plaintiff argues the facts demonstrates that Plaintiff continued as the Skaneateles Football Coach as he had a district key fob, he coordinated football practices, and the District authorized Sindoni to participate in 7-on-7 scrimmages at Henninger High School and Cicero-North Syracuse Hight School (Attorney Affirmation, NYSCEF Doc. No. 60, para. 3). Further, Plaintiff asserts that the Superintendent told Sindoni on multiple occasions that he was an employee and was to be judged at a "higher standard" (*ibid*). Plaintiff argues that when the Parties continue to perform beyond the contractual period, the contract is renewed (*see* Cinefot Intl. Corp. v. Hudson Photographic Indus., 13 N.Y.2d 249, 252 [1963], "where one enters into the employ of another under a contract for a year's service at a yearly salary and continues in the employment after the year's end, there is available an inference or implication of fact that the parties intended to renew for another year"). As Plaintiff performed, Plaintiff argues he was in fact an employee of the District.

Plaintiff reasserts that all COVID-19 precautions were observed at the Turkey Bowl (Attorney Affirmation, NYSCEF Doc. No. 60, para. 5). Plaintiff noted that at an early November cross country meet, COVID-19 precautions were not observed, such incident was reported in the media, and the District did not take any action against the cross country coaching staff (*ibid*). Plaintiff reiterates his stigma-plus arguments (*ibid* at para. 7). Plaintiff further notes that the Board impermissibly altered its September 2020 meeting minutes by adding after oral

argument on February 10, 2021 the previously missing list of appointed coaches (*ibid* at para. 10). Plaintiff reiterates his prayer for relief.

Discussion:

The Plaintiff seeks an order of the Court: i) declaring that the executive session conducted by the Board prior to its public meeting on January 5, 2021, to be in violation of Public Officers Law §100, *et seq.*, and any action during that executive session is a nullity; ii) directing the Board to reinstate Sindoni to his employment as the District's varsity high school football coach, pending further order of the Court; iii) requiring the Board and/or District to reimburse Sindoni for his attorneys' fees and costs incurred in prosecuting this action pursuant to Public Officers Law §107; iv) granting Sindoni a preliminary injunction prohibiting the District from terminating Sindoni from his employment as the District's high school varsity football coach or otherwise adversely affecting such employment until such time as it has provided Sindoni with a constitutionally sufficient notice of any charges or allegations against him and an opportunity to be heard concerning any such allegations or charges and fully complied with the requirements of Article 7 of the Public Officers Law; and v) providing such other and further relief as this Court deems just and proper.

It is unquestionable that the Board improperly went into executive session. Public Officers Law §105 sets forth the procedure of an executive session and explicitly states: "Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys" (Public Officers Law §105). The January 5, 2021 minutes regarding the executive session state *in toto*:

> "Executive Session
> Request for Executive Session
> Motion to meet in Executive Session in accordance with Public Officers Law Article 7, section 105 and District Policy 1525, to discuss:
> Matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person.
> Return to Regular Session
> Mike Kell: Tom is going to be late, family situation, so I'm going to moderate the meeting today. Bear with me please. But we just returned from an executive session in accordance with public officers law article seven, section 105 and district policy 1525 to discuss matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal, or removal of a particular person. Now we are in regular session. So Gary, could you lead us in the Pledge of Allegiance please?" (January 5, 2021 Meeting Minutes, NYSCEF Doc. No. 31).

There is no reference to the requisite vote for entering or exiting the purported executive session. Further, a review of the agenda for the meeting indicates that the executive session began at 6:00 pm while the regular meeting followed at 7:00 pm. "[W]hile a motion to go into executive session must identify the general area to be considered, it is insufficient to "merely regurgitate the statutory language...this boiler plate recitation does not comply with the intent of the statute" (Matter of Zehner v Bd. of Educ. of the Jordan-Elbridge Cent. Sch. Dist., 31 Misc 3d 1218[A], 1218A, 2011 NY Slip Op 50720[U], [Sup Ct, Onondaga County 2011], *citations omitted*). "In the absence of authorization given at an open meeting, a governmental body may not conduct an executive session" (Goodson Todman Enters. V. Kingston Common Council, 153 A.D.2d 103, 106 [Third Dept. 1990]; *cf.* Woodstock v Goodson-Todman Enters. Ltd., 133 Misc.2d 12, 22 [Sup Ct, Ulster County 1986]). Defendants violated the Open Meetings Law.

"In order to establish its entitlement to a preliminary injunction, the party seeking the injunction must establish, by clear and convincing evidence, three separate elements: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the

provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor" (Destiny USA Holdings, LLC v. Citigroup Global Mkts. Realty Corp., 69 A.D.3d 212, 216 [Fourth Dept. 2009], *internal citations and quotations omitted*). Plaintiff has demonstrated he is likely to succeed on the merits as he was an employee of the District and that the Board impermissibly terminated his employment. The Defendants have argued that there was nothing to terminate Plaintiff from, but the facts in this record demonstrate Plaintiff continued to perform as the Football Coach by holding practices and engaging in interscholastic competitions. Further, the District continued to permit Plaintiff access to District facilities. As the Parties continued the employment relationship, Plaintiff is entitled to the inference that the employment contract was renewed (*see* Cinefot Intl. Corp. *supra*). As Plaintiff was employed, the Board's purported termination needed to occur in an open meeting of the Board. Plaintiff has demonstrated a likelihood of success on the merits.

Plaintiff's damages are not limited to economic. Plaintiff has asserted a stigma-plus claim and demands a name-clearing hearing. Harm to reputation, which lies at the core of a stigma-plus claim, is an appropriate basis for the irreparable harm prong for injunctive relief (*see* Destiny USA Holdings, LLC at 222). Plaintiff has satisfied his irreparable harm burden.

The final prong, balancing the equities, favors the Plaintiff. Granting the preliminary injunction will simply maintain the status quo during the pendency of this action. Defendants have failed to demonstrate the equities lay with them. As noted in the Order to Show Cause, the preliminary injunction will only force the District to terminate Plaintiff in a proper manner should the Board be determined to end the Plaintiff's employment (OTSC, NYSCEF Doc. No. 10, p. 2). Plaintiff has satisfied his burden and is granted the requested preliminary injunction.

NOW, THEREFORE, based upon the papers filed in this action and upon the oral arguments, it is hereby

ORDERED, that the executive session conducted by the Board prior to its public meeting on January 5, 2021, to be in violation of Public Officers Law §100, *et seq.*, and any action during that executive session is a nullity; and it if further

ORDERED, that Plaintiff's request for a preliminary injunction prohibiting the District from terminating Sindoni from his employment as the District's high school varsity football coach or otherwise adversely affecting such employment until such time as the District has provided Sindoni with a constitutionally sufficient notice of any charges or allegations against him and an opportunity to be heard concerning any such allegations or charges and fully complied with the requirements of Article 7 of the Public Officers Law, is GRANTED; and it is further

ORDERED, that the Court reserves on the remaining causes of action which shall be considered at the matter's final determination.

Dated: February 16, 2021

HON. GERARD J. NERI, J.S.C.

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