

INVESTIGATION REPORT

To: Dr. Stephen Plank, Superintendent & Connie Zinnen, Assistant Superintendent
Burlington Area School District

From: Saveon D. Grenell, Attorney w/ Buelow Vetter Buikema Olson & Vliet, LLC

Date: May 20, 2021 

Subject: **Supplemental Investigation Report**

BACKGROUND

On or about January 7, 2021, certain information came to the attention of the Burlington Area School District (“the District”) that an employee, [REDACTED], had traveled to Washington D.C. to take part in a protest against the certification of the 2020 presidential election results. [REDACTED] had apparently announced the following message on his online Google Classroom, which all of his students were able to see:

“I will be GONE this week Tuesday-Thursday, and plan to be back on Friday. I will be in Washington, DC. Some of you will understand why! Some will not. I am sorry, but standing up for election integrity and our right to vote in FAIR elections is too important for me to NOT be there. Again, I plan to be back in class on Friday. Please try your best with this week’s work, and when your best isn’t good enough, try reading the directions OR reading the directions AGAIN! Work will be inspected for B Students in class on Friday, and for A Students on next Monday.”

On January 6, 2021, some individuals who had traveled to Washington D.C. engaged in unlawful and criminal activity, which is now commonly referred to as the “Insurrection at the United States Capitol”.

[REDACTED] was placed on administrative leave by the District on or around January 7, 2021 pending the outcome of an investigation due to the above-referenced announcement he made on his Google Classroom. Around the same time [REDACTED] was placed on administrative leave, the District received a citizen complaint from a member of the Burlington Coalition for Dismantling Racism against [REDACTED]. Those allegations are addressed in a separate investigatory report, which the District and [REDACTED] have received.

In order to investigate the matter regarding his classroom posts, the District authorized a confidential investigation to be conducted by myself, Saveon Grenell, Attorney with Buelow Vetter Buikema Olson & Vliet, LLC, under Burlington Area School District Board Policies 5517 “Student Anti-Harassment/Anti-Racism” and 2260 “Nondiscrimination and Access to Equal Educational Opportunity.”

During the course of my investigation, the District became aware of other concerns regarding [REDACTED] [REDACTED] which were also outside the scope of the complaint referenced above. The District asked me to investigate the additional concerns as well. Therefore, in addition to the Washington D.C. matter, the following allegations were investigated and considered:

1. [REDACTED] posted a YouTube video related to election fraud and Rudy Giuliani in his Google Classroom as an assignment;
2. [REDACTED] allowed his advisory class to decorate a door themed, “A Very Ghetto Christmas;”
3. [REDACTED] mocked and belittled students that did not stand for the Pledge of Allegiance;
4. [REDACTED] used the racial epithet, “towel head,” during class; and,
5. [REDACTED] made comments in class that the Jewish community brought the Holocaust upon themselves.

Specific allegations reviewed as part of the investigation are set forth in the “Findings and Conclusions” section of this report.¹

EXECUTIVE SUMMARY

Based on my investigation, there is no evidence at this time that [REDACTED] engaged in any unlawful activity on January 6, 2021 while he was in Washington D.C. Also, [REDACTED] has not violated Board policies, or state and federal laws as it pertains to any alleged discrimination. However, [REDACTED] has clearly shown he needs to improve his overall judgment and professionalism as a teacher in the District.

INVESTIGATION PROCESS

Between January 20, 2021 and the date of this report, the following individuals were interviewed, or contacted to provide relevant information, as part of the investigation:

- [REDACTED] – History Teacher
- Connie Zinnen – Assistant Superintendent of Burlington Area School District
- [REDACTED] – History Teacher
- [REDACTED] – History Teacher
- [REDACTED] – Special Education Teacher

¹ Matters related to the Rudy Giuliani video, the Holocaust lesson, and the Pledge of Allegiance were discussed and addressed, in full, in a separate report which was submitted on April 7, 2021 to [REDACTED] and the Complainant. These matters are incorporated by reference, and are reflected in the overall conclusion and recommendations to the District.

- [REDACTED] – Student
- [REDACTED] – Student
- [REDACTED] – Student
- [REDACTED] – Student
- [REDACTED] – Student
- [REDACTED] – Student
- [REDACTED] – Student

[REDACTED] was interviewed on January 21, 2021 and February 4, 2021. In doing so, I advised him the investigation was confidential, informed him retaliation was prohibited, and advised him of his Garrity Rights (due to possible misconduct), which he signed in the presence of his attorney. Students and staff members who were interviewed were identified by District Administration. Students were not compelled to interview with me and their participation was optional. Some students declined to be interviewed.

Prior to starting each interview, I introduced myself and informed each individual the matter was confidential. I also indicated that, generally, information they provided would not be disclosed, unless it was in furtherance of my investigation and relevant for production of this report. I also expressed that retaliation from anyone or towards anyone involved in this process was prohibited.

In addition, the following law and policies, in relevant part, were reviewed and considered:

Legal Authority

CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d et seq.

The legal standards for determining compliance with Title VI are set forth in regulations at 34 C.F.R. § 100.3(a) and (b). The regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi), further states that a recipient may not, on the grounds of race, color or national origin, deny any individual any service or benefit of its programs; provide any service or benefit to an individual which is different or provided in a different manner, subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the programs; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement or condition to be provided any service or other benefit in its programs; or, deny an individual an opportunity to participate in a program through the provisions of services that is different from that afforded others under the program. The regulation, at 34 C.F.R. § 100.3(b)(2), also

provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

Title VI and its implementing regulation require that a school's disciplinary policies and practices be applied to students without regard to a student's race. Title VI prohibits schools from intentionally disciplining students differently based on race. Enforcement of a rule or application in a discriminatory manner is prohibited intentional discrimination. To establish a Title VI claim, a plaintiff must show: (1) that the defendant discriminated against him/her on the basis of race, (2) that the discrimination was intentional, and (3) that the discrimination was a "substantial" or "motivating factor" for the defendant's actions.

Absent direct evidence of intentional discrimination based on race, the Office of Civil Rights will generally examine circumstantial evidence to evaluate whether discrimination occurred, asking: 1) did the school limit or deny educational services, benefits or opportunities to a student or group of students of a particular race by treating them differently from a similarly-situated student or group of students of another race in the disciplinary process, and if so 2) can the school articulate a legitimate, nondiscriminatory reason for the different treatment, and if so 3) is the reason articulated a pretext for discrimination.

BURLINGTON SCHOOL DISTRICT BOARD POLICY

Board Policy 3210 - Staff Ethics

An effective educational program requires the services of men and women of integrity, high ideals, and human understanding. To maintain and promote these essentials, the Board of Education expects all professional staff members to maintain high standards in their working relationships, and in the performance of their professional duties, to:

- A. recognize basic dignities of all individuals with whom they interact in the performance of duties;
- H. adhere to the policies of the Board;
- I. refrain from using position or public property, or permitting another person to use an employee's position or public property for partisan political or religious purposes. This will in no way limit constitutionally or legally protected rights as a citizen.

Board Policy 2260 – Nondiscrimination and Access to Equal Educational Opportunity

The Board is committed to providing an equal educational opportunity for all students in the District.

The Board does not discriminate on the basis of race, color, religion, national origin, ancestry, creed, pregnancy, marital status, parental status, sexual orientation, sex, (including transgender status, change

of sex or gender identity), or physical, mental, emotional, or learning disability ("Protected Classes") in any of its student program and activities.

Board Policy 5517 – Student Anti-Harassment/Anti-Racism

The Burlington Area School District and Board reject all forms of racism and harassment of a student, staff member, or school visitor as being destructive to the district's mission, vision, values, and goals. The District pledges and is committed to providing a physically and psychologically safe, secure and respectful environment, free from discrimination and harassment on the basis of race, color and national origin for all students and staff. This includes but is not limited to: in school buildings, on school grounds, in school buses and at school-sponsored activities and events.

The Board will not tolerate any form of harassment and will take all necessary and appropriate actions to eliminate it, including suspension or expulsion of students and disciplinary action against any other individual in the School District community. Additionally, appropriate action will be taken to stop and otherwise deal with any third party who engages in harassment against our students.

The Board will vigorously enforce its prohibition against harassment based on the traits of sex (including transgender status, change of sex, or gender identity), race, color, national origin, religion, creed, ancestry, marital or parental status, sexual orientation or physical, mental, emotional or learning disability, or any other characteristic protected by Federal or State civil rights laws (hereinafter referred to as "Protected Classes"), and encourages those within the School District community as well as third parties, who feel aggrieved to seek assistance to rectify such problems. Additionally, the Board prohibits harassing behavior directed at students for any reason, even if not based on one of the Protected Classes, through its policies on bullying (See Policy 5517.01 – Bullying).

Race/Color Harassment

Prohibited racial harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's race or color and when the conduct has the purpose or effect of interfering with the individual's educational performance; of creating an intimidating, hostile, or offensive learning environment; or of interfering with one's ability to participate in or benefit from a class or an educational program or activity. Such harassment may occur where conduct is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes, epithets, and/or negative references relative to racial customs.

Individual Racism

Pre-judgment, bias, or discrimination by an individual based on race. Individual racism includes both privately held beliefs, conscious and unconscious, and external behaviors and actions towards others.

Board Policy 2240 – Controversial Issues in the Classroom

The Board believes that the consideration of controversial issues has a legitimate place in the instructional program of the schools.

Properly introduced and conducted, the consideration of such issues can help students learn to identify important issues, explore fully and fairly all sides of an issue, weigh carefully the values and factors involved, and develop techniques for formulating and evaluating positions.

For purposes of this policy, a controversial issue is a topic on which opposing points of view have been promulgated by responsible opinion.

The Board will permit the introduction and proper educational use of controversial issues provided that their use in the instructional program:

- A. is related to the instructional goals of the course of study and level of maturity of the students;
- B. does not tend to indoctrinate or persuade students to a particular point of view;
- C. encourages open-mindedness and is conducted in a spirit of scholarly inquiry.

Controversial issues related to the program may be initiated by the students themselves provided they are presented in the ordinary course of classroom instruction and it is not disruptive to the educational setting.

Controversial issues may not be initiated by a source outside the schools unless prior approval has been given by the principal. Issues pertaining to human growth and development, as defined by statute, are subject to 118.019, Wis. Stats.

When controversial issues have not been specified in the course of study, the Board will permit the instructional use of only those issues which have been approved by the principal.

In the discussion of any controversial issue in the classroom or in the course of professional duties, a teacher, after student discussion on the matter has concluded, may express a personal opinion, but shall identify it as such, and must not express such an opinion for the purpose of persuading students to his/her point of view. The classroom shall not be used as a forum for the discussion of workplace issues.

The Board recognizes that a course of study or certain instructional materials may contain content and/or activities that some parents find objectionable. If after careful, personal review of the program lessons and/or materials, a parent indicates to the school that either content or activities conflicts with his/her religious beliefs or value system, the school will honor a written request for his/her child to be excused from particular classes for specified reasons. The student, however, will not be excused from participating in the course or activities mandated by the State and will be provided alternative learning activities during times of parent requested absences.

FINDINGS AND CONCLUSIONS

The following findings and conclusions for each allegation were reached based on the interviews, a review of documents provided and a review of applicable policies and procedures.

I spoke to [REDACTED] and his attorney on January 21, 2021 to discuss the various allegations against him. I also spoke to [REDACTED] on February 4, 2021 after I had several other interviews with students and

staff. Throughout my investigation, I was able to speak to a diverse group of students (Black, White, Hispanic, Male and Female). Parents of each student, if they wanted, were able to participate in the interview and did so.

Washington D.C.

As a preliminary matter, [REDACTED] and I discussed his trip to Washington D.C. [REDACTED] described his decision to go to Washington D.C. as a last minute trip with some friends. [REDACTED] informed me that he did not engage in any criminal or otherwise unlawful activity when he was in Washington D.C. on January 6, 2021, and there was no evidence otherwise. I did not ask him any further questions about his conduct in Washington D.C.

Google Classroom (D.C.)

Now, as it pertains to the Google Classroom announcement, [REDACTED] explained to me that since he would be gone that Tuesday, January 6, 2021, he read the statement aloud to some of his students on Monday, January 5, 2021 and posted it to his Google Classroom because he would not have an opportunity to tell his other classes. I was able to confirm with at least two students that he did, in fact, read the statement verbatim in class, and that other than him making the announcement, there was no further conversation on the matter.

[REDACTED] further expressed that he always wants to be open and honest with his students and as such explained to them, in detail, the reason why he would not be present in class. Based on the statement, I wanted his perspective on the use of, *“Some of you will understand why! Some will not. I am sorry, but standing up for election integrity and our right to vote in FAIR elections is too important for me to NOT be there.”* According to [REDACTED] he believed everyone (as in U.S. citizens) could agree on the fact that [we] would want fair elections, and that because high school students have formed their own opinions on politics, he believed that some students would understand why he went to Washington D.C. while others may not.

I asked [REDACTED] whether or not he believed making that statement was appropriate. He reflected and indicated looking back he had other options: 1) he could have simply not stated it all and only addressed the assignment the students had to accomplish; 2) he could have reworded it differently and chose different words; and 3) left it as it was. He then acknowledged he would learn from this situation.

[REDACTED] claims there was no ill intent behind making that particular statement in the post. While that may be true, I do find that [REDACTED] exercised poor judgment by stating some students would understand why he was going to Washington D.C. while others would not, especially given his underlying explanation for the statement. There is nothing inherently wrong with [REDACTED] being open and honest with students about “why” he went to Washington D.C., but the extra commentary and implication that the election was not fair brings unnecessary controversy and division into the classroom and could alienate certain students. His explanation that limited the interest in fair elections to U.S. citizens is also concerning, given that the District educates children who may or may not be U.S. citizens. The type of comments made by [REDACTED] do not have a place in any classroom, let alone his Google Classroom. [REDACTED] should exercise restraint before expressing any personal opinions to the students.

A Very Ghetto Christmas

During the course of the investigation, concerns arose regarding Christmas door decorations [REDACTED] had allowed his advisory students to use. It was forwarded to me as a matter to discuss with [REDACTED]. The email from December 20, 2019 states as follows:

Mr. Plitzuweit,

I'm confused? You and Officer Bochardt took down my advisory's door decorations yesterday during 7th period without any explanation as to why. I allowed my advisory to choose a theme and I ok'd "A Very Ghetto Christmas." These decorations were intended to be humorous and get a few laughs as people walked by. No disrespect, but if you could kindly provide me with an explanation as to why you did this, so that I may inform my advisory students today during advisory time, that would be much appreciated. Please don't just say "offensive" or "inappropriate" in your response, as I know we live in super politically correct times and someone could be offended because someone else breathes the same air as they do. If you could take a few minutes to briefly explain our school's decision to remove our decorations. Thank you for take the time to do this in advance.

[REDACTED] explained that every year during Christmas, every advisory gets to decorate their door. His students were juniors and they picked the theme that he "Ok'd" it. According to him, he had already discussed the matter with administration. He had a meeting with them and said that the issue was resolved. I asked what the actual decorations were and he said the students had printed out pictures of themselves and essentially placed them on the Christmas tree.

[REDACTED] decision to allow the theme, combined with his email to Mr. Plitzuweit calling the theme humorous and questioning why the decorations were removed, is very concerning. Again, it shows poor judgment, insensitivity, and could alienate certain students. There is absolutely no justifiable reason why students should be allowed to decorate anything with the theme, "A Very Ghetto Christmas."

Racial Slurs

There was an allegation that [REDACTED] used the term "towel head" in the classroom. When I asked [REDACTED] about this, he indicated that the term was used in the context of a classroom discussion and that he believed a student had used it. [REDACTED] does not recall using the term. [REDACTED] explained that his class was discussing the coronavirus pandemic and how it was impacting students. According to him, the Chinese student referenced in the coronavirus lesson explained how she was impacted due to the anti-Asian rhetoric (such as COVID-19 being called the Chinese-virus) surrounding the pandemic and the class discussed what type of impact those words could have on someone. I asked students whether [REDACTED] has ever used racial slurs in class and they indicated that he had not. Therefore, I have come to the conclusion that any assertion [REDACTED] has used racial slurs in class or directed them towards students is unfounded.

CONCLUSION

Based on my investigation, [REDACTED] has not violated Board policies or state or federal laws as it pertains to any alleged discrimination. There is no evidence [REDACTED] has treated students differently

or discriminated against students based on their characteristics in a protected class. There is also no evidence ██████ engaged in any unlawful activity on January 6, 2021 while he was in Washington D.C. Even though I have not found a violation of board policy, ██████ requires significant professional growth and meaningful improvement in his overall judgment, decision-making, and interactions with students.

RECOMMENDATIONS

1. The District should require ██████ participate in meaningful professional development (e.g., cultural sensitivity/culturally responsive education), which shall be determined at a later date by Administration.
2. The District should meet with ██████ to discuss expectations for curriculum and the use of controversial topics/materials in the classroom.
3. The District should place ██████ under strict supervision and develop a schedule of announced and unannounced observations of ██████ classroom for the 2021 – 2022 school year and provide him feedback regarding the same.