

**Report of Special Counsel
Regarding Traverse City Area Administrators' Allegations
of Harassment and Intimidation by Traverse City Area
Public Schools Executive Members**

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INTRODUCTION

On September 25, 2017, the Traverse City Administrators Association ("TCAA") conveyed to the Traverse City Area Public Schools ("TCAPS") Board President and the TCAPS School Board a one-page, unsigned, letter dated September 20, 2017, "to bring to light concerns of a pattern and practice of harassment and intimidation by the Executive Team onto the Administration Team." The TCAA accuses Superintendent Paul Soma of a "pattern and practice of harassment and intimidation" citing two recent situations regarding the West Senior High Administration and the "release/reassignment of an East Middle School Administrator." The TCAA letter also included unspecified past treatment of other administrators. An investigation was specifically requested in the TCAA letter.

APPOINTMENT OF SPECIAL COUNSEL

At a study session meeting of the Traverse City Area Public Schools Board of Education held in Conference Room C of the Tompkins Boardman Administration Center on the 25th day of September, 2017 at 6:00 p.m., a Resolution to Appoint Special Counsel was offered and passed by the Board of Education.

The undersigned and Bauckham, Sparks, Thall, Seeber & Kaufman, P.C. ("Bauckham Sparks") were retained as special counsel by the Traverse City Area Public Schools Board of Education.

On September 26, 2017, TCAPS Board President, Erik Falconer, distributed to members of the Executive Team a copy of the Resolution and requested that any concerns regarding the appointment of special counsel be raised. No member of the Executive Team conveyed concerns to the TCAPS Board President. The Board President also conveyed the Resolution to the TCAA and no concerns regarding said appointment were raised.

BOARD DIRECTIVE

The TCAPS Board of Education, in a public statement announcing the investigation, stated, “[t]he Board of Education directs that all school district employees cooperate fully with the Board President and Bauckham Sparks in carrying out the investigation. Further the Board directs that no one is to take any action to interfere with the investigation, including, but not limited to, destruction of any records or retaliation against any employee working with the Board or involved in the complaint in this matter.”

SCOPE OF INVESTIGATION AND PROCESS

Special Counsel was requested to investigate allegations raised in the TCAA’s letter, to include the identification and parameters of complaints and complainants, investigate the underlying facts of recent disciplinary actions imposed against West Senior High School Administrators, obtain consent of the Executive Team members and the TCAA for timelines to be waived,¹ and issue a report with factual findings to the Board of Education.

As part of the initial process, Special Counsel reviewed the TCAA Master Agreement and Board Policies. Special Counsel also received and reviewed TCAPS documents relating to the removal of “Spirit Rock” and subsequent actions related to individuals identified as being involved in the removal of the rock.

Special Counsel reviewed information to identify the individuals associated with TCAPS who had knowledge of the “two most recent situations regarding West Senior High Administration...” alleged in the TCAA complaint, the substance of their knowledge, examine

¹ TCAA Board Officials waived all timelines. The Executive Team, through their attorney, initially waived all timelines up to thirty (30) days; then, recognizing scheduling challenges of the parties involved and attorney conflicts, waived timelines as to completion of the investigation and report.

how the incidents were handled by Executive Team Members, and identify and report any Board Policy violations to the Board of Education. Special Counsel requested of the TCAA any further concerns be brought forth to determine relevancy.

Special Counsel was contacted by the former Human Resource Director.

Special Counsel was permitted access to TCAPS' premises. Numerous documents and sixteen personnel files were reviewed, as well as TCAPS Board Policies and procedures. Special Counsel also considered relevant legal standards that may be implicated.

As part of the investigation, Special Counsel met with and interviewed numerous members of the TCAA, Executive Team, as well as TCAPS' professional and staff members. Twenty-three meetings were held on seventeen occasions, either at the School District or in the Traverse City area. At the request of the TCAA, meetings with administrators were generally scheduled after normal school hours to avoid potential disruption to building operations. Meetings with Executive Team members and their attorneys were held during regular business hours, accommodating the schedules of the members, their counsel, and Special Counsel.

Each person interviewed by Special Counsel was advised that although Special Counsel has no position of authority, the expectation is that the interviewee would be honest, forthright, and without omission regarding the substance of his/her responses. Further, Special Counsel advised the interviewee that no promise of confidentiality could be made. Special Counsel also advised the interviewee that he reserved the right to assess and make credibility determinations, and any deception or otherwise may be noted within the report.

To find whether a pattern and practice of "harassment and intimidation exists," the underlying facts and the conduct of persons within each situation were reviewed, as well as the Executive Team members' subsequent actions. In the opinion of Special Counsel, such was necessary to determine whether egregious administrative conduct occurred, if an employment

decision and discipline were for reasons not arbitrary and capricious, or if Board violations are determined.

This report focuses on three identified situations and the underlining facts of each, and TCAPS' personnel and the Executive Team actions relative to the identified situations. Special Counsel has not been authorized to investigate, nor address, any additional concerns raised by the TCAA.

The findings and opinions of Special Counsel follow.

COMPLAINT

The TCAA alleges that the Executive Team engaged in a "pattern and practice of harassment and intimidation onto the Administrative Team" by citing:

- a) A situation [removal of Spirit Rock] involving the Principal and Assistant Principal of West Senior High;
- b) "Release/reassignment of an East Middle School administrator" to a teaching position; and
- c) [former] Human Resources Director.

TCAA Board members and complainants were interviewed on multiple occasions. TCAA Board members and the complainants framed their harassment and intimidation allegation as follows:

- TCAPS Executive Team members violated Board policy as to the level of discipline TCAA members received for involvement in the removal of "Spirit Rock" from West High School;
- TCAPS Executive Team members violated Board policy when investigating TCAA members' involvement in the removal of Spirit Rock from West High School;

- TCAPS Executive Team members violated Board policy as to the reassignment of a TCAA member from West High School to East Middle School;
- TCAPS Executive Team members violated Board policy when communicating to the media about the investigation and discipline of TCAA members regarding the removal/investigation of “Spirit Rock” from West High School; and
- TCAPS Executive Team members violated Board policy concerning the separation of an Assistant Principal from East Middle School to a teaching position.
- The TCAA also allege [unspecified] “past treatment of administration including: West Middle School head principal, Central High School head principal, Human Resources Director, head principal at Traverse Heights Elementary, and head principal at Long Lake Elementary. There are also concerns regarding the treatment of current employed Administration Team members.”

The TCAA Board president advised Special Counsel that he would serve as the gatekeeper of any further information regarding other possible complaints from the TCAA membership.²

RECENT HISTORY

Re: Removal of “Spirit Rock” and District Investigation

During the spring of 2017, Joe Esper, principal of West Senior High School, mentioned to other WSH administrators that he would welcome the removal of Spirit Rock. Charles Kolbusz, an assistant principal of WHS, with rented equipment, went to WSH on Sunday, July 16, 2017, dug a hole near the rock, described to be “6-7” feet deep, pushed the rock into the hole, and buried it. The remaining dirt was spread near the tennis courts.

² On November 10, 2017, Special Counsel advised the TCAA Board president and another TCAA Board official that factfinding of the investigation would be concluding, and the focus would move toward analysis and reporting. TCAA officials responded that any further information would be submitted only as an “FYI.”

A few weeks later, the rock was noted to be missing, and the superintendent confirmed such. On August 8, 2017, Superintendent Paul Soma, Associate Superintendent Christopher Parker, Human Resource Director Cindy Berck, WSH Principal Joe Esper, and TCAA president Ryan Schrock, were seated at the table in Conference Room B, of the Boardman Building, waiting for the start of a scheduled meeting.

Before the start of the meeting, Mr. Soma asked Mr. Esper what happened to the rock. Based upon witness accounts, Mr. Esper initially responded that he did not know. Mr. Soma asked again, and Mr. Esper is reported to have responded that parents with heavy equipment may have removed the rock, adding that the rock was not good for students. Mr. Soma asked Mr. Esper if he had checked the cameras, and Mr. Esper is reported to have responded no, that "we're moving on." Witnesses described Mr. Esper's responses as "evasive."

Mr. Soma received information that Charles Kolbusz may have been involved in the removal of the rock, and members of the Executive Team started an investigation on August 31, 2017. On that date, Dr. Berck interviewed Mr. Kolbusz and Mr. Parker interviewed Mr. Esper, both declined association representation.

Mr. Parker noticed and met with Mr. Kolbusz and his TCAA representative on September 7, 2017. Mr. Parker also noticed and met with Mr. Esper and his TCAA representative on September 7, 2017. Mr. Kolbusz and Mr. Esper were each notified of their disciplinary measures and each inquired about an appeal process. While applicable Board Policy 1139 does not include an appeal process, an individual appeal process meeting was held for Mr. Kolbusz and Mr. Esper. Mr. Kolbusz was noticed, and he with his TCAA representative attended an appeal meeting on September 13, 2017. Mr. Kolbusz's discipline was reduced from a 3-day suspension and an IDP, to a 2-day suspension and the use of the evaluation model. Mr. Esper was noticed, and he with his TCAA representative attended an appeal meeting on September 13, 2017. Mr. Esper requested

that his discipline be reduced from a 5-day suspension to a verbal reprimand, and the use of the evaluation model. After consideration, it is reported that the Executive Team offered to reduce Mr. Esper's disciplinary measure from a 5-day suspension to 4 days, to remove the IDP, and use the evaluation model as requested. Mr. Esper rejected the proposed level of discipline.

Re: "Release/reassignment of an East Middle School Administrator" to a teaching position

On August 31, 2017, Mr. Ranney and his family were at the Central Grade Elementary School to complete the registration process for Extended Day childcare. It was reported that Mr. Ranney was upset, frustrated, and angry at the prospect that his earlier on-line registration of his child may not be the "timestamp" for the registration, but the date of the submission of the final form at the registration "open house" on August 31, 2017. Mr. Ranney refuted that he was angry and acted inappropriately, citing that the registration process was "confusing."

After receiving reports of Mr. Ranney's alleged behavior, the District started an investigation. Mr. Ranney was noticed and he, with TCAA representation, was interviewed the following day. Before the District concluded its investigation, outside Mr. Ranney's presence, Mr. Ranney's TCAA representative, Mr. Ranney's supervisor, and Executive Team members, opined that he may not be ready for the position of assistant principal and discussed his return to teaching.

Mr. Ranney's TCAA representative called him and asked if he would consider resigning his position as assistant principal and return to teaching. Mr. Ranney called Dr. Berck and left a message. Dr. Berck returned his call. Mr. Ranney asked about his options and Dr. Berck responded: let the process "playout" or resign from assistant principal and return to teaching. Mr. Ranney concluded the phone call. Mr. Ranney again called Dr. Berck and left a message and Dr. Berck returned his call. Mr. Ranney announced his decision to resign his assistant principal decision and submitted his resignation via email. Several days later, Mr. Ranney and his TCAA

representative attended a meeting with Executive Team members to learn of his new teaching assignment as a Literacy Coach.

Re: Former Human Resources Director

The former Human Resources Director alleges that Mr. Soma is a “bully” and “hothead” who forced her to retire or face discipline and accept a new District position reviewing policies. Ms. Davis asserts that as a 24-year employee, Mr. Soma did not provide any reason for discipline or to be “forced” to leave her H.R. position, other than she “can’t keep up the pace” and complaints regarding her staff and customer service.

Mr. Soma issued an Individual Development Plan (“IDP”) to Ms. Davis. In addition, the District hired a consultant to develop and implement the IDP, and work with Ms. Davis. Ms. Davis was issued a “7/7/16” evaluation. Ms. Davis and Mr. Soma disagreed on the content and scoring. Ms. Davis and Mr. Soma agreed to a different and improved evaluation, with a higher score and revised content: the agreed-upon evaluation was “backdated” “6/30/16.”

In August, 2016, Ms. Davis submitted her retirement notice, dated March 15, 2017, indicating her last day as July 5, 2017. Mr. Soma accepted her letter by correspondence, dated “8/31/16.” Thereafter, Mr. Soma and Ms. Davis met on September 22, 2016, where Mr. Soma announced his decision to reassign her to special projects. Mr. Soma prepared a formal memo addressed to Ms. Davis, dated September 22, 2016, regarding her new assignment; she was also required to not have contact with the H.R. staff for four days. It is unrefuted that Mr. Soma left the September 22, 2016 memo in a sealed envelop on Ms. Davis’ desk.

AUTHORITIES

A. TRAVERSE CITY ADMINISTRATORS' ASSOCIATION MASTER AGREEMENT, JULY 1, 2017 – JUNE 30, 2020

The following sections of the TCAA Master Agreement are deemed relevant:

BOARD RIGHTS Section 11

11.1 The Board, on its own behalf, on behalf of the electors of the district, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan, and of the United States, including, but without limiting the generality of the foregoing, the right to the executive management and administrative control of the school system and its properties and facilities, and the activities of its employees; to hire all employees, and subject to the provisions of law, to determine their qualifications, and the conditions for their continued employment, or their dismissal, or demotion; and to promote and transfer all such employees; to establish grades and courses of instruction including special programs, and to provide for athletic, recreational, and social events for students, all as deemed necessary or advisable by the Board; to decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aides of any kind and nature; to determine class schedules, the hours of instruction, and the duties, responsibilities, and assignments of all employees with respect thereto and non-teaching activities, and the terms and conditions of employment.

11.2 The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement and then only to the extent that such specific and express terms hereof conform with the Constitution and the laws of the United States.

11.3 Nothing contained herein shall be considered to deny or restrict the Board of its rights, responsibilities, and authority under the Michigan general school laws or any other national, state, county, district, or local laws or regulations as they pertain to education.

11.4 Unless expressly provided otherwise in this agreement, the Board reserves the right to:

- a. direct the work of its employees; hire, promote, demote, transfer, assign, and retain employees in positions within the school district;
- b. suspend or discharge employees;
- c. maintain the efficiency of the school operation;
- d. determine services to be rendered by the public schools;
- e. take actions as may be necessary to carry out the mission of the public schools;
- f. determine the methods, means, and personnel by which operations are carried on;
- g. be the policy making and governing body of the public schools; and
- h. take any other action which is in the best interest of the public schools including the right to subcontract any portion of the operations in the school district.

* * *

(See, TCAA, Master Agreement, July 1, 2017 – June 30, 2020, pps. 6-7;
http://www.tcaps.net/downloads/human_resources/tcaa-contract.pdf.)

GRIEVANCE PROCEDURE

Section 15

15.1 DEFINITIONS

- a. A "grievance" is a written complaint by an administrator that there has been a specific violation of the express written terms of this agreement.
- b. A "day" means a weekday (Monday through Friday) exclusive of Saturday, Sunday, or legal holidays.

15.2 LEVEL I

- a. In the event that the Association or a bargaining unit employee discovers there is a basis for a grievance, the alleged grievance shall first be discussed with a designated non-bargaining unit administrator/ supervisor.

15.3 LEVEL II

- a. If, as a result of the informal discussion, the grievance still exists, the administrator may, within five (5) days following the alleged grievance, invoke the formal grievance procedure through the Association to the Human Resources Office in writing. The written grievance shall include:

- (1) Identification of the grievant(s).
- (2) The specific facts upon which the grievance is based.
- (3) The applicable portion of the agreement allegedly violated.
- (4) The specific relief requested.
- (5) The date on which the alleged grievance occurred.
- (6) The date on which the grievance is being filed.
- (7) Signature attesting to the facts as presented.

b. Within ten (10) days of receipt of the grievance, the Employer's designated representative shall meet with the Association in an effort to resolve the grievance. The Employer's designated representative shall indicate the disposition of the grievance in writing within ten (10) days of such meeting and shall furnish a copy thereof to the Association.

15.4 LEVEL III

a. If the grievance is not resolved at Level II, the Association may ask for mediation within ten (10) days of the receipt of the decision at Level II. The mediator will be scheduled at a time that is mutually acceptable to the Employer, the Association, and the mediator, but an attempt will be made to schedule said meeting within fifteen (15) days of the request for mediation. The mediator shall be allowed to recommend alternatives to resolve the grievance but such recommendations shall not be binding on either party. Grievances which are unresolved to the satisfaction of either party shall be a matter of collective bargaining at the next successor contract.

15.5 The time limits established by this grievance procedure shall be strictly construed, except that the parties to this agreement reserve the right to mutually extend or alter said time limits in writing. Any grievance procedure not advanced to the next step of the grievance procedure within the time limits specified shall be deemed abandoned.

15.6 In the event the Employer's representative fails to respond to a grievance within the time limits specified, said grievance shall be deemed denied.

15.7 An Association representative may be present during discussion or hearings at any grievance level. The grievant will be present at all formal and informal grievance hearings.

15.8 The Traverse City Administrators' Association Executive Board or the Central Office Executive Team may call a meeting for

the purpose of attempting to resolve issues that do not get resolved through a grievance hearing.

(See, TCAA, Master Agreement, July 1, 2017 – June 30, 2020, pps. 10-11; http://www.tcaps.net/downloads/human_resources/tcaa-contract.pdf.)

B. BOARD POLICIES

The TCAA complaint letter of September 20, 2017 does not cite any Board Policies that Executive Team members are alleged to have violated. Through numerous meetings with TCAA Board officials, TCAA members, and information received, the TCAA allege that the Executive Team violated several Board Policies related to the investigation and discipline of its members and a former member.

Executive Team members allege that the West Senior High School Principal and Assistant Principal violated State statute and Board Policies regarding the removal of Spirit Rock, and their subsequent explanation of events.

For reference, the following Board Policies are printed below in either full length or summarized. Board Policies may be found on the TCAPS website. (See: <http://www.neola.com/traverse-mi/>.)

The following Board Policies are listed by numerical value according to the on-line Table of Contents:

1. Board Policy 1139 – School Administrator Discipline

Policy 1139 refers to “administrators” who are supervisory employees of the School District who serve as Principals or Assistant Principals. Policy 1139, states:

1139 - SCHOOL ADMINISTRATOR DISCIPLINE

For the purposes of this policy, the term "administrator" shall refer to supervisory employees of the school district who serve as principals or assistant principals.

The Board believes that maintaining appropriate procedures and standards for addressing administrator misconduct is a critical ingredient in furthering an effective educational environment and in providing quality educational services necessary for the attainment of successful educational outcomes for students. This policy is intended to provide standards and procedures by which the Superintendent or his/her designee shall make determinations as to whether administrator discipline is warranted and, if so, in arriving at an appropriate disciplinary response.

Although discipline is corrective, other significant purposes of discipline are to promote accountability of administrators to maintain proper conduct, to provide notice to administrators of behavioral expectations, and to inform administrators of the consequences of any future disciplinary infractions, offenses or other misconduct.

Discharge, demotion or other discipline of administrators under this policy shall be made only for a reason(s) that is not arbitrary or capricious. This standard signifies that a disciplinary decision must be supported by results of a disciplinary investigation and that any resulting disciplinary action must have a rational relationship to the administrator's conduct which forms the basis for a disciplinary decision.

Prior to imposing any disciplinary measure under this policy, the Superintendent or his/her designee shall investigate whether or not an administrator has engaged in an offense, infraction or other misconduct which could result in a disciplinary consequence. The Superintendent or his/her designee shall investigate the alleged violation prior to imposing a disciplinary measure upon the administrator. The investigation should include discussions with any witnesses to the event(s) upon which possible administrator discipline is premised, including witnesses or other sources suggested by the administrator being investigated. The administrator who is the subject of the disciplinary allegation shall be provided with an opportunity to respond to those allegations as part of the investigation process.

The following procedures shall be used for disciplinary actions taken against administrators, up to and including a recommendation for dismissal:

- A. Oral or written notice will be given by the Superintendent or his/her designee to the administrator of the incident, complaint or charge that forms the basis for the investigation and for potential disciplinary action.
- B. If the complaint alleges child abuse, the matter shall be reported to Child Protective Services consistent with Policy 3213 – *Supervision and Welfare*.
- C. The administrator will be given written notice of the time, date and location of a meeting to provide the administrator with an opportunity to respond to the disciplinary incident, complaint or charge. This shall include the right of the administrator to dispute the factual basis of the incident, complaint or charge, as well as the nature of any contemplated

disciplinary action in the event that the disciplinary incident, complaint or charge is substantiated.

- D. Administrators represented by an exclusive bargaining agent under the Public Employment Relations Act shall be entitled to union representation at any investigative meeting which the employee reasonably believes could ultimately result in disciplinary action. Alternatively, administrators shall, upon his/her request, be entitled to have another member of their bargaining unit accompany them to any investigative meeting which the administrator under investigation is required to attend where that administrator reasonably believes that the investigation may result in him/her being disciplined.
- E. The Superintendent (or his/her designee) is authorized to suspend an administrator, with pay, pending the completion of a disciplinary investigation of the alleged or suspected offense, infraction or misconduct. This authority can be exercised in those circumstances where, in the judgment of the Superintendent (or his/her designee), the nature of the charges, the behavior or record of the administrator, or other circumstances make it inadvisable for the administrator to remain at work while the investigation is ongoing. Suspension from duty under this provision shall not be regarded as, in itself, a disciplinary measure or penalty.
- F. If criminal charges are filed against an administrator prior to or during the pendency of a disciplinary investigation by the school system, the administrator may be placed on unpaid leave during the pendency of the investigation after notice and an opportunity to be heard.
- G. If an investigation of an administrator's behavior results in a determination that the administrator has engaged in an offense, infraction, misconduct, or other behavior warranting discipline, the administrative decision as to the level of discipline shall be guided by the following standards:
 - 1. The adequacy of the evidence derived from investigation must support the need for disciplinary action.
 - 2. The seriousness of the offense, infraction or misconduct.
 - 3. The administrator's prior disciplinary and employment record.
 - 4. How administrators engaging in similar or like offenses, infractions or misconduct have been disciplined in past comparable circumstances involving similarly situated administrators.
 - 5. The existence of aggravating or mitigating factors.
 - 6. Disciplinary measures include but are not limited to: oral warnings, written warnings, written reprimands, paid or unpaid suspensions, and discharge. Nothing in this policy or the identification of these levels of discipline requires that the above disciplinary measures be applied progressively or sequentially. The District reserves the right to apply the disciplinary sanction it determines to be appropriate to a specific set of circumstances.

7. The Superintendent (or his/her designee) is delegated the authority under this policy to impose all administrator discipline.

2. Board Policy 3210 – Staff Ethics

Policy 3210 requires TCAPS employees to possess “integrity, high ideals and human understanding.” Policy 3210 - Staff Ethics states in relevant part:

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;

* * *

- C. exercise due care to protect the mental and physical safety of students, colleagues, and subordinates;

* * *

3. Board Policy 3211 – Whistleblower Protection

Policy 3211 requires the employees to be honest and ethical in their conduct and to comply with applicable State and Federal laws, Board Policies and administrative guidelines. Policy 3211 states in relevant part:

3211 - WHISTLEBLOWER PROTECTION

The Board of Education expects all its employees to be honest and ethical in their conduct, and to comply with applicable State and Federal law, Board policies and administrative guidelines. The Board encourages and requires staff to report possible violations of these Board expectations. Parents, volunteers, contractors and concerned citizens are encouraged to report possible violations, when done in good faith belief.

It is the responsibility of an employee who is aware of conduct on the part of any Board member or employee that possibly violates Federal or State

law, or Board policy, to call this conduct to the attention of his/her immediate supervisor. If the employee's immediate supervisor is not responsive or is the employee whose behavior is in question, the employee may report to the Superintendent. If the reported conduct relates to the Superintendent, the report may be filed directly with the Board President.

After such a report is made, the employee will be asked to put the report in writing. Any employee making such a report shall be protected from discipline, retaliation, or reprisal for making such report as long as the employee had a good faith belief as to the accuracy of any information reported. Employees are subject to disciplinary action, up to and including termination, for knowingly making a false report under this policy. Employees may also be subject to disciplinary action, up to and including termination, if they are aware of a violation of Federal, State, or local law involving or relating to the business of the District and they do not make a report confirmed in writing to a supervisor in accordance with this policy.

The Superintendent shall develop administrative guidelines necessary for implementation of this policy, including the development of forms upon which such reports may be made.

The Administrative Guidelines state that after a written report is filed by a complainant, the matter will be investigated within fifteen (15) days. It should be noted that all parties relevant to this matter have waived the fifteen-day guideline.

4. Board Policy 3213 – Supervision and Welfare

3213 - STUDENT SUPERVISION AND WELFARE

Professional staff members because of their proximity to students are frequently confronted with situations which, if handled incorrectly, could result in liability to the District and personal liability to the professional staff member. It is the intent of the Board of Education to direct the preparation of guidelines that would minimize that possibility.

The Superintendent shall maintain and enforce the following standards:

* * *

- B. A professional staff member should not volunteer to assume responsibility for duties s/he cannot reasonably perform. Such assumption carries the same responsibilities as assigned duties.

* * *

5. Board Policy 3362 – Anti-Harassment

Policy 3362 outlines the District's policy statement to provide an environment free from harassment, including sex-based harassment. Pursuant to the policy, the District will investigate allegations of harassment, including sex-based harassment, and take action, including discipline as necessary. Policy 3362 includes sex-based harassment, race/color harassment, religious (creed) harassment, national origin harassment, and disability harassment.

6. Board Policy 3362.01 – Threatening Behavior Toward Staff Members

Policy 3362.01 prohibits threatening behavior consisting of any words or actions that threaten the physical safety of a staff member or cause anxiety concerning physical/psychological well-being.

7. Board Policy 3362.02 – Work Place Safety

Policy 3362.02 requires staff members to maintain a safe work environment and to participate in investigations as necessary. The policy also seeks to ensure that persons involved in investigations are provided information during investigations and not suffering from retaliation because of their good-faith participation.

8. Board Policy 7410 – Maintenance

Policy 7410 recognizes that the District's fixed assets represent significant investment and their maintenance is a prime concern of the Board. The Board requires inspection, maintenance and rehabilitation for the preservation of all school buildings and equipment.

9. Board Policy 7440 – Plant Security

Policy 7440 recognizes buildings as the greatest financial investment of the District. The Board requires that buildings and equipment be protected from theft and vandalism "in order to maintain the optimum conditions for carrying out the educational programs." The Superintendent

or designee is charged with developing and supervising a program for the security of the school buildings, grounds and equipment and vehicles pursuant to statute and the rules of the State.

10. Board Policy 9105 – District Image and Reputation

Policy 9105 requires the Superintendent and the Board develop and implement a plan to retain and attract students and staff through communication and community relations at the building and community levels. In addition, the Superintendent is responsible for protection and enhancement of the reputation of the Traverse City Area Public Schools.

11. Board Policy 9130 – Public Complaints and Grievances

Policy 9130 permits any person or group having a legitimate interest in the District the right to present a request, suggestion, complaint or grievance concerning District personnel through a grievance process. Of particular concern is Item D, “Fourth Level,” which permits an unresolved matter that requires Board decision or action to be heard by the Board.

C. LEGAL AUTHORITIES AND STANDARDS

Statutory and Case Law

Title VII of the Civil Rights Act of 1964, 42 USC § 2000e *et seq.* (“Title VII”) and the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* (“ELCRA”) protect Michigan employees from workplace harassment.

Title VII prohibits harassment on the basis of “race, sex, color, religion or national origin.” 42 USC § 2000e-2(a)(1). The ELCRA prohibits harassment based on “race, sex, color, religion, national origin, height, weight or marital status.” MCL 37.2202.

The Age Discrimination and Employment Act of 1967, 29 USC § 621 *et seq.*, the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and the Americans With Disabilities Act of 1990, 42 USC § 12101, *et seq.*, prohibit harassment.

In in an effort to conduct a thorough investigation, Special Counsel considered the complaints and claims of Joe Esper, Charles Kolbusz, Kirk Ranney and Christine Davis, as they might apply to the prohibitions enumerated in the above cited statutes. After doing so, Special Counsel was not presented with sufficient evidence to conclude that the provisions of the statutes were violated.

TCAPS Board Policy 1139 – “Not Arbitrary or Capricious” Standard

TCAPS Board Policy 1139, School Administrator Discipline states, in relevant part:

“Discharge, demotion or other discipline of administrators under this policy shall be made only for reasons that is [are] not arbitrary or capricious. This standard signifies that a disciplinary decision must be supported by results of a disciplinary investigation, and that any resulting disciplinary action must have a rational relationship to the administrator’s conduct which forms the basis for a disciplinary decision.”

Public Act 100 of 2011 eliminated the Teachers’ Tenure Act’s previous requirement of “reasonable and just cause” to discharge or demote a tenured teacher; and instead, inserted language that permits discharge or demotion of a teacher on continuing tenure to be made “only for a reason that is not arbitrary or capricious.” (MCL 38.101.)

While discipline of school administrators is not restricted to this public act, the “not arbitrary or capricious” standard within TCAPS policy 1139 is the same. The standard was defined by the Michigan Court of Appeals upholding discharge of a tenured teacher. *Cona v Avondale School District*, 303 Mich App 123 (2013), citing, *Mich Farm Bureau v Dept of Environmental Quality*, 292 Mich App 106, 141 (2001), quoting *Nolan v Dept of Licensing and Regulation*, 151 Mich App 641 (1986). Relevant to this instant matter, “[A]rbitrary means fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance, and capricious means apt to change suddenly, freakish or whimsical[.]”

An action will be found to be arbitrary if there are no reasonable grounds for the exercise of judgment. (*American Trucking Associations, Inc v US*, 344 US 298, 317 (1953).)

Due Process

Public employees having a property interest in their position are afforded due process as part of a disciplinary measure that could include termination. *Cleveland Bd Of Educ v Loudermill*, 470 US 532, 542 (1985). Due process includes providing notice of an allegation and a hearing to tell his/her account. *Gilbert v Homar*, 520 US 924 (1997).

Fair Labor Standards Act

The Fair Labor Standards Act ("FLSA") permits deductions from an exempt employee's salary for unpaid disciplinary suspensions for infractions of safety rules and one or more full days imposed in good faith for infractions of workplace conduct rules. (29 CFR 541.602(b)(4-5).)

Miss Dig Underground Facility Damage Prevention and Safety Act 174 of 2013 ("Miss Dig")

Miss Dig requires a person performing excavation (i.e., "moving, removing, or otherwise displacing earth, rock, or other material below existing surface grade with power tools or power equipment") to provide a dig notice to the notification system at least 72 hours, but not more than 14 calendar days, before the start of any blasting or excavation.

INVESTIGATION AND FINDINGS

A. Allegation – “Pattern and Practice of Harassment and Intimidation by Executive Team onto the Administration Team.”

1. “Spirit Rock” or “the rock”

a) Special Counsel’s Review of Underlying Facts Regarding the Removal of Spirit Rock and Administrators’ Subsequent Explanations.

Witness Statements

Statement of WSH Principal Joe Esper

Mr. Esper stated that the Spirit Rock has been an issue at West Senior High for approximately two years. (Intv. 10-10-17; No. JE100517.) Spirit Rock has been the subject of vandalism with “hate speech” painted on it. *Id.* Mr. Esper cites that students painting LGBTQ + rainbows on the rock were offended when their work was painted over with Trump slogans, Confederate flags or statements such as “fag” or “straight pride.” *Id.* Mr. Esper believes that this has led to verbal and nearly physical confrontations and eventually to a large student-organized protest in which over 100 students walked out of class and stood at the rock. *Id.* Mr. Esper stated that when he left for vacation on July 5, Spirit Rock was covered in statements about President Trump and other “insider” slogans. *Id.*

Mr. Esper asserts that no formal plan was developed to remove Spirit Rock; however, he previously told other administrators at West Senior High that if an opportunity became available to remove it without cost to the District, he would welcome it. *Id.*

Mr. Esper was on vacation with his family from approximately July 5 returning July 18, 2017. *Id.* On July 16, 2017, Mr. Esper received a text message from Charles Kolbusz with pictures of what he described as a “backhoe,” with the question “anything else?” (Intv. 10-10-17.) Mr. Esper admitted that he responded to Mr. Kolbusz, “rock.” *Id.* Special Counsel asked Mr. Esper if

he retained the text message exchange between he and Mr. Kolbusz, and Mr. Esper responded that the text messages have been deleted. (Intvs. 10-10-17; 11-15-17.)

Mr. Esper claims that he had no formal plan with Mr. Kolbusz to remove Spirit Rock, and he had no discussion with Mr. Kolbusz regarding its removal afterward. (Intv. 10-10-17; No. JE100517.) Mr. Esper maintains that the removal of the rock is not in factual dispute: Mr. Kolbusz removed Spirit Rock after he received the text from him. *Id.* Mr. Esper stated that he did not believe that Mr. Kolbusz would actually remove the rock. (Intv. 11-15-17.) Mr. Esper offered that, approximately one year ago, students from Central High School had dug a hole near Spirit Rock in an attempt to bury it; however, those responsible abandoned their plans to do so. (Intv. 10-10-17; No. JE100517.)

Mr. Esper stated that both he and Mr. Kolbusz were familiar with the West High School grounds, and he did not feel that there was any danger to students regarding any nearby utilities during Spirit Rock's burial. (Intv. 10-10-17; No. JE100517.) Special Counsel asked Mr. Esper if he knew where any utilities may be buried, Mr. Esper did not. (Intv. 10-10-17.)

Mr. Esper stated that he believed that he did not require the permission of the superintendent nor the Executive Team to make the decision to remove the rock. (Intvs. 10-10-17, 11-15-17; No. JE100517.) Mr. Esper added that, in other "similar situations in the past," when he proactively informed Executive Team members about similar changes they demonstrated little interest in them. (Intv. 10-10-17; No. JE100517.) Mr. Esper explained that on one occasion when the superintendent visited West Senior High, he (Esper) ordered the removal of the Titan mural from the gym and the superintendent failed to express interest. *Id.* Mr. Esper also cited that he, without the Executive Team's permission, "changed traditional graduation programs, diploma design, honor cords and recognitions, pickup and drop off zones, crosswalks and other items in the past." (Intv. 10-10-17; No. JE100517.)

Mr. Esper did not review any policies, procedures or protocols regarding the process for which to remove the rock. (Intv. 10-10-17.) Mr. Esper stated that, in retrospect, he should have filed a work order with the school to have the rock removed over the summer, and let them call Miss Dig. *Id.* Mr. Esper speculated that calling maintenance to remove the rock would have been part of a backlog of projects and been at a substantial cost to the District. (Intv. 10-10-17; No. JE100517.) Mr. Esper did not provide any information to verify his speculation. Mr. Esper added that he could have sent Mr. Soma or other Executive Team members communication and told them “the rock is gone” and invited any questions, but that he did not. (Intv. 10-10-17; No. JE100517.)

Statement of WSH Assistant Principal Charles Kolbusz

Mr. Kolbusz stated that he is a ten-month employee with summers off. (Intv. 10-16-17.) He advised that he has considerable experience with earth-moving equipment and described himself as “a farm boy.” *Id.* Mr. Kolbusz is familiar with Spirit Rock and described it as a “vehicle for nastiness.” *Id.* He explained that Spirit Rock had been painted with Swastikas, KKK, and disparaging comments regarding LGBTQ. (Intv. 10-16-17; CK100417; CK written statement, dated, Sept. 13, 2017.) Mr. Kolbusz recalled that Spirit Rock has been a topic of conversation over the years. (Intv. 10-16-17.)

During the month of July, 2017, Mr. Kolbusz rented an excavator for family projects and had time remaining before the return of the excavator. (Intv. 10-16-17.) Mr. Kolbusz sent a text to Mr. Esper with a photograph of the excavator inquiring if he had any use. *Id.* Mr. Kolbusz stated that Mr. Esper responded, “take care of the rock.” *Id.* Like Mr. Esper, Mr. Kolbusz also stated that his text message was deleted. *Id.*

On Sunday, July 16, 2017, Mr. Kolbusz went to West Senior High, and with the use of the rented excavating equipment, dug what he described as a “6-7-foot hole” beside Spirit Rock. (Intv. 10-16-17.) Mr. Kolbusz then pushed the rock into the hole and buried it. *Id.* He recalled that a

pile of dirt was left over. *Id.* He contacted a family member who brought his personal equipment, described as a “small John Deer tractor,” to West Senior High. *Id.* With the use of his personal equipment, Mr. Kolbusz took the excess dirt and filled-in areas around the tennis court to repair rain damage. *Id.*

Mr. Kolbusz explained that he had used his personal equipment in the past to move and plant trees, while working under the former Principal of West Senior High, but without ever having received express permission on any specific occasion. (Intv. 10-16-17.) Mr. Kolbusz further added that he never filed any paperwork or work orders with the school to do so. *Id.* Mr. Kolbusz stated that he is knowledgeable of Miss Dig requirements, as he had called the service in the past for work on his personal property. *Id.* Mr. Kolbusz admitted, however, that he did not consider calling Miss Dig on the occasion to remove or bury the rock, nor for any other prior project on school grounds. *Id.*

Statement of TCAPS Superintendent Paul Soma

Superintendent Soma stated that he is very familiar with Spirit Rock as a family member and her friends had their picture recently taken beside the rock. (Intv. 11-07-17.) Superintendent Soma stated that he was made aware that the rock was missing by the family member at the end of July or early August, 2017, when she asked what happened to it. *Id.* Superintendent Soma was unaware that Spirit Rock was missing, and shortly thereafter, drove to West Senior High and the building’s entrance site where the rock had been located. *Id.* Superintendent confirmed that Spirit Rock had been removed. *Id.*

Superintendent Soma stated that his next opportunity to meet with Mr. Esper was on August 8, 2017, at the Boardman Building, in Conference Room B. (Intv. 11-07-17.) The superintendent explained that the purpose of the meeting was related to classroom observations and “High Quality Visions” (“HQV”). *Id.* He recalled the HQV meeting was scheduled to meet

with Executive Team members, Mr. Esper as principal of West Senior High, and representation from the Associations: Ryan Schrock of the TCAA and Allyson McBride-Culver of the TCEA. *Id.*

Superintendent Soma recalled that several of the intended attendees casually met in Conference Room B prior to the start of the HQV meeting. (Intv. 11-07-17.) He recalled those present included: Christopher Parker, Cindy Berck, Ryan Schrock, and Joe Esper - but no teachers arrived until the start of HQV meeting. *Id.* Superintendent Soma recalled that he was seated at the table (facing north) and to his immediate left Joe Esper was seated near the head of the table (facing east). *Id.* The superintendent did not know where Christopher Parker nor Cindy Berck were seated. *Id.*

Superintendent Soma described the pre-meeting as “social.” Superintendent Soma reported that he asked Mr. Esper, “Hey Joe, what happened to the Rock?” (Intv. 11-07-17.) He recalled that Mr. Esper responded, “I don’t know, it’s gone.” *Id.* The superintendent stated that he was struck by Mr. Esper’s demeanor when he (Esper) stated that he didn’t know what happened to the rock, and he again asked Mr. Esper what happened. *Id.* Mr. Esper responded, “maybe parents with equipment took the rock.” *Id.* The superintendent recalled that he asked Mr. Esper if he had watched the video, and Mr. Esper responded “no.” *Id.* Superintendent Soma added that he asked Mr. Esper to follow up on it and report back to him. *Id.* Superintendent Soma stated that the conversation with Mr. Esper lasted for about thirty seconds. Superintendent Soma added that there was a “very clear mutual understanding” that he wanted to know what happened to the rock, as “people would make a big deal of it.” *Id.*

Superintendent Soma added that he believed Mr. Esper’s initial response that he “didn’t know what happened to the rock” appeared somewhat dismissive and a “weird” answer, so he asked him again what had happened to the rock. (Intv. 11-07-17.) According to the superintendent, Mr. Esper offered an explanation that parents with heavy equipment may have removed the rock,

but did not offer any further information about what happened to it, only that it was a distraction. *Id.* Mr. Soma added that Mr. Esper did not later follow-up with him, nor provide any additional information regarding the removal of the rock until he (Esper) was interviewed by Christopher Parker on August 31, 2017. *Id.*

Superintendent Soma reported that he had no further conversation about the rock until he was contacted by another Executive Team member, Christine Thomas-Hill, Associate Superintendent for Finance and Operations, approximately three weeks after his conversation with Mr. Esper. (Intv. 11-07-17.)

On August 30 or 31, Ms. Thomas-Hill reported to Superintendent Soma that a maintenance employee reported to her that he saw a video of July 16, 2017, depicting a truck at West Senior High with a trailer and backhoe. (Intv. 11-07-17.) A person (later identified as Charles Kolbusz) dug a hole and buried the rock, and moved the excess dirt on the grounds. *Id.* Later, the maintenance employee noticed a red truck belonging to Charles Kolbusz and surmised that Mr. Kolbusz was the person seen in the video digging the hole and burying the rock. (Intv. 11-15-17.) Superintendent Soma stated at that point, "Charles Kolbusz and Joe Esper must have some information regarding the removal of the rock." (Intv. 11-07-17.) Superintendent Soma then contacted Christopher Parker and Cindy Berck to conduct an immediate investigation into the removal of Spirit Rock. *Id.* (Intvs. 10-24-17; 11-02-17; 11-07-17.)

Statement of TCAPS Associate Superintendent Christopher Parker

Associate Superintendent Christopher Parker was present on August 8, 2017 at the Boardman Building, Conference Room B prior to the start of the HQV meeting. (Intv. 11-02-17.) He recalled that, prior to the meeting, he, Cindy Berck, Ryan Schrock, Paul Soma and Joe Esper were seated at the table. *Id.* Mr. Parker observed and heard the conversation between Superintendent Soma and Mr. Esper. *Id.* Mr. Parker recalled that Cindy Berck was seated to his

left, directly across from Superintendent Soma and Mr. Esper was seated directly across from him (Parker).

Mr. Parker stated that there were no other conversations at that time, only Superintendent Soma and Mr. Esper talking about Spirit Rock. (Intv. 11-02-17.) Mr. Parker reported that he clearly heard Superintendent Soma ask Mr. Esper "what happened to the rock?" *Id.* Mr. Parker recalled that Mr. Esper leaned back in his chair and crossed his arms, and with a "smug" look responded, "I don't know." *Id.* Mr. Parker recalled that Mr. Esper's response immediately drew his attention because, several months prior, he had counseled Mr. Esper regarding his personal communication and mannerisms. Mr. Parker added that Mr. Esper was again conveying himself in a rather "nonchalant, smug fashion." *Id.*

Mr. Parker was struck by Mr. Esper's apparent dismissive tone and demeanor toward the superintendent and felt that he needed to talk with Mr. Esper about his demeanor, adding that, "I didn't know he was lying at that time." (Intv. 11-02-17.)

Mr. Parker recalled that Superintendent Soma again asked Mr. Esper, "No really, what happened to the rock?" (Intv. 11-02-17.) According to Mr. Parker, Mr. Esper responded, "It's been a distraction, and maybe parents with some heavy equipment removed it or took care of it." *Id.* Superintendent Soma then asked him if he was going to check the tapes, and Mr. Esper responded, "No, we're just moving on." *Id.*

Mr. Parker described Superintendent Soma's demeanor when he first asked Mr. Esper "what happened to the rock" as inquisitive; and the second question was more serious. (Intv. 11-02-17.) Mr. Parker added that it was quite apparent he (Soma) wanted to know what happened to the rock. *Id.* Mr. Parker added there could be no misunderstanding that the superintendent wanted to know about the rock, as he is a "rather straightforward individual." *Id.* Mr. Parker added that he was concerned that Mr. Esper's responses to the superintendent's questions were "dismissive

and evasive” adding that “Joe knows Paul very well and there could not be any misunderstanding that Paul wanted to know about the rock. Paul is very detail-oriented.” *Id.*

Statement of TCAPS Director of Human Resources, Dr. Cindy Berck

Dr. Cindy Berck was present in Conference Room B prior to the HQV meeting. (Intv. 10-24-17.) Dr. Berck recalled that she was seated across from Superintendent Soma, and to her right a vacant chair, and then Ryan Schrock, TCAA President, and to his right, Christopher Parker. *Id.* Dr. Berck recalled that Mr. Esper was seated to the left of Superintendent Soma. *Id.*

Dr. Berck recalled that Superintendent Soma asked Mr. Esper “what happened to the rock?” (Intv. 10-24-17.) She described that Mr. Esper then tilted himself away from Mr. Soma, crossed his legs and arms and responded, “I don’t know.” *Id.* She thought that Mr. Esper’s response was “disrespectful” and “nervy.” *Id.* Dr. Berck recalled that Superintendent Soma stated, “No, I’m serious, what happened to the rock?” *Id.* Dr. Berck recalled that Mr. Esper responded, “I don’t know” or “I’m not sure,” as he changed his tone. *Id.* She added that Mr. Esper continued, “Maybe some community members removed it.” *Id.* She recalled that Superintendent Soma then asked him if he was going to check the cameras and Mr. Esper responded, “No, that’s not necessary. It was an educational distraction and I’m just going to let it lie.” *Id.* Dr. Berck added that their conversation ended as more people entered the room. *Id.*

Statement of TCAA President Ryan Schrock

Ryan Schrock was present at the Boardman Building, Conference Room B on August 8, 2017. (Intvs. 9-28-17; 11-10-17.) Mr. Schrock stated that he was seated across from Joe Esper, and to Mr. Esper’s right he believes a teacher was nearby. (Intv. 11-10-17.) Mr. Schrock described Superintendent Soma as seated to his immediate left across from Mr. Esper. *Id.* Mr. Schrock reported that he heard Superintendent Soma ask Mr. Esper “what happened to the rock” and that Mr. Esper responded that he was on vacation and when he returned it was gone. *Id.* Mr. Schrock

heard Superintendent Soma ask Mr. Esper, “really, did you check the cameras?” *Id.* Mr. Schrock heard Mr. Esper respond that he (Esper) did not check the cameras and that “the rock’s gone and we’re moving on.” *Id.* Mr. Schrock does not recall Mr. Esper responding to Superintendent Soma, “I don’t know.” *Id.* Mr. Schrock recalled that Mr. Esper appeared “evasive” while talking with the superintendent. *Id.* Mr. Schrock stated their conversation ended as more people arrived. *Id.*

Statement of Joe Esper Regarding: Soma – Esper August 8, 2017 Conversation

Mr. Esper stated that he was present on August 8, 2017 at the Boardman to discuss classroom observations. (Intv. 10-10-17.) He reported that some teacher representatives were present and some walked in late. *Id.* (Intv. 11-15-17.) He speculated that Mr. Parker may have been present, but was unsure. (Intv. 11-15-17.) Mr. Esper described the meeting as very informal, “an ice-breaker,” but admitted that Superintendent Soma did ask “what happened to the rock?” Mr. Esper explained that Mr. Soma did not appear to question who buried the rock, but casually asked what happened. (Intv. 11-15-17.) He described their conversation as lasting approximately 90 seconds. (Intv. 10-10-17.) Mr. Esper admitted that he could have provided more information, but felt that Superintendent Soma was not that interested and only casually asked about the rock. (Intv. 10-10-17; No. JE100517.)

Mr. Esper reported that there was no further conversation about the rock until he was “interrogated” by Christopher Parker on August 31, 2017. (Intv. 10-10-17; No. JE100517.)

Mr. Esper later reported to Special Counsel that Superintendent Soma, Ryan Schrock, Cindy Berck and Christopher Parker were at the meeting on August 8; however, he was unsure of where they were in the room. (Intv. 11-15-17.) Mr. Esper recalled that Superintendent Soma asked him about the rock, but does not remember if he asked who removed it. *Id.* Mr. Esper recalled that he responded to Superintendent Soma that he had a good idea, but he did not confirm who had removed the rock. *Id.* Special Counsel asked if he (Esper) offered the explanation to the

superintendent that parents with equipment may have removed it, and Mr. Esper responded "I'm not sure, I may have." (Intv. 11-15-17.)

Special Counsel asked Mr. Esper if he told others, including colleagues, staff and students, that he did not know what happened to the rock. (Intv. 11-15-17.) Mr. Esper responded by repeating the question, "Did I tell others I did not know what happened to the rock... no." *Id.*

Findings of Special Counsel Regarding Removal of Spirit Rock

It is unrefuted that Spirit Rock had messages painted upon it on several occasions. Mr. Esper made comments to his West Senior High colleagues that he would welcome its removal. Mr. Esper, while on vacation in July, received a text message from Mr. Kolbusz showing a picture of excavating equipment asking of its use. Mr. Esper indicated the rock. Both Mr. Esper and Mr. Kolbusz claim their text messages have been deleted.

On Sunday, July 16, 2017, in the afternoon, Mr. Kolbusz with his red truck transported rented excavating equipment to West Senior High. Mr. Kolbusz dug a hole, approximately 6-10 feet-deep, and pushed Spirit Rock into the hole, and filled-in the hole. Afterward, Mr. Kolbusz used personal equipment to fill-in water damage around the WSH's tennis courts.

Based upon the preponderance of the evidence, it is reasonable to conclude that neither Mr. Esper nor Mr. Kolbusz considered Board policies or State statute (i.e., Miss Dig) before or during the removal of Spirit Rock.

On August 8, 2017, before the start of the scheduled HQV meeting at the Boardman Building, Superintendent Soma, Christopher Parker, Cindy Berck, Joe Esper and Ryan Schrock were seated at the conference room table in Conference Room B. Mr. Soma asked Mr. Esper what happened to the rock? Based upon information received, Mr. Esper initially responded that he did not know. When asked again, Mr. Esper responded that the rock had experienced painted messages, and in his opinion, it had become a distraction and was not good for students. Mr. Esper

then speculated and offered that parents with heavy equipment may have removed it. Mr. Soma asked if he (Esper) checked the security cameras, and Mr. Esper responded that he had not, and “we’re moving on.”

Based upon the preponderance of the evidence, it is reasonable to conclude that Mr. Esper’s initial response to the superintendent was not true and that he (Esper) was evasive while omitting pertinent information.

b) Special Counsel’s Review of the District’s Investigation of the Removal of Spirit Rock.

On August 30 or August 31, 2017, Ms. Thomas-Hill reported to Superintendent Soma that the Facilities Manager reported to her that he saw a video of the removal of Spirit Rock, and that the removal occurred on Sunday, July 16, 2017, in the afternoon. (Intvs. 10-24-17; 11-15-17; *See, Exhibit A – B.* Amon emails dated Thursday, August 31, 2017 and September 1, 2017.) On August 31, 2017, Superintendent Soma met with Mr. Parker and Dr. Berck at the Boardman Building and asked them to contact Joe Esper and Charles Kolbusz and investigate the removal of the rock. (Intvs. 10-24-17; 11-02-17; 11-07-17.) Dr. Berck called TCAA President Ryan Schrock to advise him that two administrators may need union representation and requested that he be on standby. (Intv. 10-24-17.)

On August 31, 2017, Mr. Parker and Dr. Berck traveled together to West Senior High. (Intv. 11-02-17.)

RE: August 31, 2017

Dr. Cindy Berck Interview of Charles Kolbusz

Dr. Berck and Mr. Kolbusz sat together in his office for approximately 45 or 50 minutes discussing unrelated matters. (Intvs. 10-16-17; 10-24-17.) Dr. Berck briefly left the office for a few minutes and observed Mr. Parker in the hallway. (Intv. 10-24-17.)

Dr. Berck stated that she interviewed Mr. Kolbusz regarding the removal of Spirit Rock. (Intv. 10-24-17.) At that time, Dr. Berck placed a second phone call with Mr. Schrock in Mr. Kolbusz's presence. (Intv. 10-24-17.) Mr. Kolbusz declined to have Association representation present. (Intvs. 10-16-17; 10-24-17.)

Dr. Berck recalled that Mr. Kolbusz appeared honest and forthright as he admitted he buried Spirit Rock. (Intv. 10-24-17.) Mr. Kolbusz explained that he had excavating equipment with rental time remaining, and that he had sent a text message to Joe Esper with a picture of the equipment and a question. (Intvs. 10-16-17; 10-24-17.) Mr. Kolbusz admitted that Joe Esper responded for him to take care of the rock. (Intv. 10-24-17.)

Dr. Berck recalled that Mr. Kolbusz did not believe that he had done anything wrong by digging a "10-foot hole and burying the rock." (Intv. 10-24-17.) Dr. Berck asked Mr. Kolbusz if he had contacted "Miss Dig" and he responded "no." *Id.* Dr. Berck added that Mr. Kolbusz accepted full responsibility, and that it was his idea. *Id.* Mr. Kolbusz told Dr. Berck, and later the Executive Team, that he and Mr. Esper had no formal plan to remove the rock, or any conversation with others after its removal. (Intvs. 10-16-17; 10-24-17.) Dr. Berck reported that Mr. Kolbusz admitted to her that he would say to others at West Senior High when questioned, "I don't know" and "just let it lie." (Intv. 10-24-17.) Dr. Berck felt that Mr. Kolbusz's statements to colleagues, staff, and students at West Senior High was a form of concealment, however, at no time during TCAPS' investigation into the removal of the rock did Mr. Kolbusz deny or conceal his involvement to her or other Executive Team members. (Intv. 10-24-17.) Dr. Berck stated that she did not address any specific Board policies with Mr. Kolbusz at the time of his August 31, 2017 interview. (Intv. 10-24-17.)

RE: August 31, 2017

Christopher Parker Interview of Joseph Esper

Mr. Parker stated that TCAA president Ryan Schrock called him to advise that the administrators did not want representation. (Intv. 11-02-17.) Mr. Parker made contact with Mr. Esper at his office at West Senior High. *Id.* Mr. Esper was offered, but declined Association representation. (Intvs. 10-10-17; 11-02-17.) Mr. Parker stated that he interviewed Mr. Esper, informing him that he (Parker) had additional information regarding the removal of the rock. (Intv. 11-02-17.) Mr. Parker reported that Mr. Esper was initially “evasive” but that he (Parker) interrupted him (Esper), “I bailed him out.” *Id.* Mr. Esper complained to Special Counsel that Mr. Parker told him on August 31, 2017, that his “conversation with Soma was another example of me [Esper] telling the district to F-off.” (Intv. 10-10-17; No. JE1000517.) Mr. Esper did not indicate that such comment was harsh or intimidating, in fact, Mr. Esper described his relationship with Mr. Parker as “buddies.” (Intv. 10-10-17.) When later questioned by Special Counsel, Mr. Parker responded that he could not “recall” making that comment, adding that both he and Mr. Esper have exchanged such language in the past, indicating a non-adversarial relationship. (Intv. 11-03-17.) Mr. Parker added that at no time during the TCAPS investigation did he try to intimidate Mr. Esper. *Id.*

Mr. Esper admitted to Mr. Parker that Mr. Kolbusz had a backhoe and he had sent him a text message asking if he needed anything. (Intv. 11-02-17.) Mr. Esper responded, “the rock.” *Id.* According to Mr. Parker, Mr. Esper told him that if people asked about the rock at the school, he responded, “it’s gone and we’re moving on.” *Id.* According to Mr. Parker, Mr. Esper admitted that he had not followed or reviewed any protocols for removing the rock. *Id.* Mr. Esper stated that he did not think to call Miss Dig at the time. *Id.* Mr. Parker asked Mr. Esper if he was aware of the

rock's removal when Superintendent Soma asked on August 8, 2017. *Id.* According to Mr. Parker, Mr. Esper responded that he was aware. *Id.*

Mr. Parker and Dr. Berck returned to the Boardman Building and discussed the Kolbusz and Esper interviews. (Intvs. 10-24-17; 11-02-17.) Dr. Berck prepared the "Investigative Results West Senior High School August 31, 2017" report regarding Charles Kolbusz and Joe Esper and the removal of Spirit Rock. (*See, Exhibit B* - "Investigative Results West Senior High School August 31, 2017".) The District's report was reviewed by Mr. Parker and signed by Dr. Berck on September 1, 2017. (Intvs. 10-24-17; 10-25-17; 11-02-17.)

District's Proposed Disciplinary Measure

Joe Esper

Dr. Berck and Mr. Parker reviewed the "Investigative Results" report on August 31, 2017 and September 1, 2017. (Intvs. 10-24-17; 10-25-17; 11-02-17.) Dr. Berck and Mr. Parker considered the nature and process of removing Spirit Rock and that neither Mr. Esper nor Mr. Kolbusz followed any maintenance protocols. (Intvs. 10-25-17; 11-03-17.) Mr. Esper authorized Mr. Kolbusz to remove the rock and such was known when Mr. Esper was questioned by the superintendent on August 8, 2017. *Id.* Mr. Parker asserts as aggravating factors that Mr. Esper knew what happened to the rock when the superintendent asked him on August, 8, 2017, and he "lied"; and safety concerns about removing the rock. (Intv. 11-3-17.)

Dr. Berck and Mr. Parker also considered that Mr. Esper had not received any prior discipline, and according to Dr. Berck, this was a "heavy factor" for not terminating Mr. Esper. (Intv. 11-02-17.) Also, Mr. Parker acknowledges that Mr. Esper has "done a lot of great things for TCAPS and has made positive contributions, mitigating against a more severe disciplinary measure." (Intv. 11-3-17.)

Dr. Berck and Mr. Parker considered Board policy 1139, and discipline that other administrators had received in the past. (Intv. 11-2-17; 11-3-17.) Dr. Berck advised that several administrators had received discipline and that she and Mr. Parker considered the circumstances of other administrators who were suspended. (Intv. 11-2-17.) One [former] administrator received a 10-day suspension for an “ineffective [employee] investigation” and another [former] administrator received a 3-day suspension for [conduct determined as] “plagiarism.” *Id.* Dr. Berck and Mr. Parker determined that Mr. Esper’s offenses did not rise to the level of the former administrator that received a 10-day suspension, and the conduct resulting in a 3-day suspension was less offensive than Mr. Esper’s conduct. *Id.*

Dr. Berck stated that after considering the process of removing the rock, failing to contact maintenance for service, and intentionally making untrue statements to the superintendent when initially questioned, and considering discipline that others had received, she prepared a disciplinary memorandum to Mr. Esper for a 5-day suspension and an Individual Development Plan (“IDP”). (Intv. 10-25-17.) (*See, Exhibit C* - Esper “Memorandum” dated September 5, 2017.) According to Mr. Parker, the intent of the IDP was to improve Mr. Esper’s communication.

District’s Proposed Disciplinary Measure

Charles Kolbusz

Dr. Berck and Mr. Parker considered several factors when determining a disciplinary measure for Mr. Kolbusz. (Intv. 11-3-17.) Mr. Kolbusz received authorization to remove the rock from Mr. Esper, his supervisor. (Intv. 11-2-17.) Mr. Kolbusz appeared credible and admitted to his involvement regarding the removal of Spirit Rock without being evasive, and he had no prior discipline. *Id.* However, Mr. Kolbusz failed to contact maintenance for the removal of Spirit Rock. Mr. Kolbusz’s actions could have jeopardized the safety of students and staff. *Id.*

Dr. Berck and Mr. Parker determined that Mr. Kolbusz's conduct merited a suspension and considered the proposed 5-day disciplinary measure for Mr. Esper. (Intv. 11-2-17.) Dr. Berck and Mr. Parker concluded that Mr. Kolbusz should receive less suspension. *Id.* Dr. Berck prepared a disciplinary memorandum to Mr. Kolbusz for a 3-day suspension and an Individual Development Plan. (See, **Exhibit D** - Kolbusz "Memorandum" dated September 5, 2017.)

RE: September 7, 2017 Disciplinary Conferences

Mr. Parker provided notice of the September 7, 2017 date, time, and location to meet with both Mr. Esper and Mr. Kolbusz, individually, at Mr. Parker's office. (Intv. 11-2-17.) (See, **Exhibit E** – Two Computer printouts for September 7, 2017 meeting date, time, location, and confirmed participants: Mr. Parker, Joe Esper, and Ryan Schrock at 9:30-10:00; and Mr. Parker, Charles Kolbusz, and Ryan Schrock at 10:30-11:00.)

Joe Esper

Present at the September 7, 2017 meeting were Joe Esper, Christopher Parker and Ryan Schrock. (Intv. 11-2-17.) According to Mr. Parker, the September 7, 2017 meeting was scheduled to convey the disciplinary memorandum to Mr. Esper. *Id.* Mr. Parker stated that Mr. Esper did not raise any issue at that time regarding the content of the memo. *Id.* Mr. Esper did not appear to appreciate the significance of removing Spirit Rock, but he appeared to be shocked at the consequence, yet filed no objection to the 5-day suspension. *Id.* Mr. Esper asked of an appeal process and Mr. Parker responded no, but that such would be reviewed. *Id.* Mr. Esper asked Mr. Parker if there was a "plan to move him out," to which Mr. Parker responded "no." *Id.*

During the meeting, Mr. Schrock asked if there was an appeal process in which Mr. Parker was unaware, but would review the matter with the Executive Team. (Intv. 11-2-17.) Mr. Parker added that at no time did Mr. Schrock nor Mr. Esper request any revision to the disciplinary memorandum dated September 5, 2017. *Id.*

Mr. Parker advised Special Counsel that in the past when he has held disciplinary meetings, should an employee bring forth additional information, the proposed discipline could be reviewed and revised if appropriate. (Intv. 11-3-17.) Concerning Mr. Esper, the Executive Team felt that his suspension of five days was warranted because he is Mr. Kolbusz's direct supervisor and authorized the removal of Spirit Rock, as well as safety concerns. (Intv. 11-3-17.) In addition, Mr. Parker stated, "Joe lied about what he did." (Intv. 11-2-17.)

Charles Kolbusz

Christopher Parker, Charles Kolbusz and TCAA President Ryan Schrock met on September 7, 2017 at the Boardman Building. (Intv. 11-3-17.) At that time, Mr. Parker issued to Mr. Kolbusz the "Memorandum" dated September 5, 2017 and a 3-day unpaid suspension for failing to follow facilities and maintenance protocols and concealing his actions and involvement with the removal of the Spirit Rock. *Id.* Mr. Parker stated that no additional information was sought at that time because there was no factual dispute regarding the removal of the Spirit Rock. *Id.* He advised, however, if Mr. Kolbusz had further information, it would have been considered. *Id.* Mr. Kolbusz felt it was a significant consequence for his actions, but that he did not dispute the factual findings. *Id.* According to Mr. Parker, Mr. Kolbusz did not dispute the content of his September 5, 2017 disciplinary memo. *Id.* The significant issue raised by Mr. Kolbusz was the proposed transfer from West Senior High to East Middle School. *Id.* Mr. Parker advised that the transfer was not a disciplinary measure, as East Middle School had an opening, and that Mr. Kolbusz had worked with the East Middle School staff in the past and felt that he would be well-suited as the Assistant Principal of East Middle School. *Id.* Mr. Kolbusz expressed an interest in an appeal. *Id.* He was advised that the Executive Team would review the request. *Id.* The August 31, 2017 Investigative Report and the September 5, 2017 Memorandum were given to Mr. Kolbusz and Mr. Schrock. *Id.*

RE: September 11, 2017

Dr. Cindy Berck "Memo" to Ryan Schrock

On September 11, 2017, Dr. Cindy Berck gave Ryan Schrock a copy of the Investigative Report entitled "Investigative Results, West Senior High School, August 31, 2017," that was prepared by Dr. Berck and reviewed by Mr. Parker. (Intvs. 10-24-17; 11-2-17.) Dr. Berck signed and dated the TCAPS Investigative Results report "9-1-17." (Intv. 10-24-17.) Also listed within that memo was a chart of "Summary of TCAA Disciplinary Action 2017" depicting administrators who had received discipline and the alleged offense. *Id.* The chart was prepared by Dr. Berck. (Intv. 10-23-17.)

Pursuant to the request of Mr. Esper and Mr. Kolbusz, an appeals process was developed. (Intv. 10-25-17.) An appeals process is not included within Policy 1139.

RE: September 11, 2017

Meeting Between Superintendent Soma and Joe Esper

Prior to the September 13, 2017 appeals meeting, Joe Esper requested he and Superintendent Soma meet. (Intvs. 10-10-17; 11-7-17.) Both Mr. Esper and the Superintendent described the meeting as cordial when they discussed the matter. Mr. Esper claims that he apologized for his "mistake." (Intv. 10-10-17.) Superintendent Soma recalled that he believed that their meeting went well, nonetheless, stating that both decided that the September 13 appeals meeting would continue as scheduled. (Intv. 11-7-17.)

RE: September 13, 2017 Appeals Process Meeting

Mr. Parker provided notice of the September 13, 2017 date, time, and location to meet with both Mr. Esper and Mr. Kolbusz, individually, at the Boardroom Conference Room A. (Intv. 11-2-17.) (*See, Exhibit F – Two Computer printouts for September 13, 2017 meeting date, time, location, and confirmed participants: Charles Kolbusz, Chris Parker, Cindy Berck, Paul Soma, and*

Ryan Schrock, scheduled for 4:30 p.m. -5:30 p.m.; and Chris Parker, Cindy Berck, Paul Soma, and Ryan Schrock, and Joe Esper indicated as “?”; scheduled for 5:30 p.m. -6:30 p.m.)

RE: September 13, 2017 Appeals Process Meeting

Charles Kolbusz

Present were Charles Kolbusz, Paul Soma, Christopher Parker, Cindy Berck and Ryan Schrock (Intv. 10-25-17.) Dr. Berck prepared an appeals sheet to outline the appeals process. (Intv. 10-25-17.) (*See, Exhibit H* – “Appeals Process” outline.)

Charles Kolbusz read his statement at the September 13, 2017 appeals process meeting. (Intvs. 10-16-17; 10-25-17.) Mr. Kolbusz stated that he did not want to miss anything, and that he was very emotional during that time. *Id.* Mr. Parker recalled that Mr. Kolbusz appeared to understand the gravity of the situation, fully admitting to his participation in the removal of Spirit Rock, and was very apologetic. (Intv. 11-3-17.) Mr. Kolbusz acknowledged that he did not follow any rules or protocols when removing the rock. *Id.* At the conclusion of Mr. Kolbusz’s presentation, admission of his involvement, and expression of remorse, the Executive Team (Soma, Berck, Parker) caucused to the superintendent’s office. (Intv. 11-3-17.)

Mr. Parker stated that the Executive Team was not convinced that Mr. Kolbusz and Mr. Esper did not have a plan to remove the rock; however, based upon Mr. Kolbusz’s presentation, showing of remorse, and no prior discipline, his disciplinary measure was reduced from a 3-day suspension and an IDP to a 2-day suspension and the Marzano Evaluation Model. (Intv. 11-3-17.) (*See, Exhibit G* - Kolbusz “Memorandum” dated September 13, 2017.) The Executive Team (Soma, Parker, Berck) maintains that the proposed transfer from West Senior High to East Middle School was unrelated to any disciplinary measure that had been proposed, but was to fill the vacancy at East Middle School. (Intv. 11-3-17). Notwithstanding, the District’s disciplinary “Memorandum” dated September 5, 2017, prepared for Mr. Kolbusz contains an inscription: “+

transfer to EMS 10/2/17.” (See, Exhibit D.) Mr. Parker stated that based upon Mr. Kolbusz’s contributions to West Senior High, he was allowed to continue at West Senior High as Assistant Principal. (Intv. 11-3-17.)

RE: September 13, 2017 Appeals Process Meeting

Joe Esper

Present were Joe Esper, Paul Soma, Christopher Parker, Cindy Berck, and Ryan Schrock (Intv. 10-25-17.)

According to Dr. Berck, after sharing the appeals process, Mr. Esper stated that he had made a mistake, that he “owned the decision” about removing Spirit Rock as he had told Mr. Kolbusz to do so, and he felt it was the right thing to do to protect students. (Intv. 10-25-17.) According to Dr. Berck, Mr. Esper stated that he did not feel comfortable in answering Superintendent Soma’s questions about Spirit Rock on August 8th because other people were in the room, and he should have followed up with the Superintendent, but he got busy and simply forgot. *Id.*

During the appeal meeting, Superintendent Soma told Mr. Esper that his “deceit” was “unprecedented” and the discipline as presented on September 7, 2017 is in line with his offenses. (Intv. 10-25-17.) According to Dr. Berck, Mr. Esper did not defend nor refute Superintendent Soma’s statement; he only responded that he “cannot accept the discipline as communicated on September 7, 2017.” *Id.* Mr. Esper then presented his proposal entitled “9/13/2017 Appeal Meeting” as an alternative. *Id.* (See, **Exhibit I** - “9/13/2017 Appeal Meeting”.) Rather than the 5-day suspension and IDP as proposed by Dr. Berck and Mr. Parker, Mr. Esper requested a verbal reprimand, no notation in his personnel file, no separate IDP, but the Marzano Evaluation Model, and an offer to write about the incident apologizing for his “mistake.” *Id.* (See, **Exhibit I**.)

After receiving Mr. Esper's counter-disciplinary proposal, Dr. Berck, Superintendent Soma and Mr. Parker left the conference room and deliberated in caucus in the superintendent's office for approximately 10 to 15 minutes. (Intvs. 10-25-17; 11-15-17.) After consideration of the facts of the matter, the discipline as outlined in the September 5, 2017 Memo to Mr. Esper, and his counter-proposal, Mr. Parker stated that the Executive Team (Soma, Berck, Parker) discussed reducing Mr. Esper's discipline to a 4-day unpaid suspension, and, rather than an Individual Development Plan, use the Marzano Evaluation Model for evaluation as proposed by Mr. Esper. (Intv. 11-3-17.) The Executive Team offered to expunge Mr. Esper's personnel file after two years if no further infractions occurred. *Id.*

Mr. Esper responded to the Executive Team that he could not accept that level of discipline, and that he would be contacting the Board of Education. (Intvs. 10-25-17; 11-3-17.) Mr. Esper then left the meeting at approximately 7:30 p.m., and sent by his cell phone an email to the Board of Education at 7:33 p.m. (Intvs. 10-25-17; 11-3-17; 11-15-17.) This email was prepared in advance by Mr. Esper and he sent it using his cell phone upon leaving the Conference Room. (Intv. 11-15-17.) (Esper email dated September 13, 2017, 7:33 p.m.)

Following the September 13, meeting, Dr. Berck issued a revised disciplinary Memorandum to Mr. Esper for a 5-day suspension, editing the September 5, 2017 memo to remove reference that, Monday, September 18, 2017 would be the first of the five unpaid days. (*See, Exhibit J - Esper "Memorandum" dated September 15, 2017.*)

FINDINGS OF SPECIAL COUNSEL

Joseph Esper

Mr. Esper argues that the proposed disciplinary measure for his involvement in the removal of Spirit Rock is excessive. For Mr. Esper's involvement in the removal of Spirit Rock, and his responses to the superintendent's initial inquiry, the Executive Team (Soma, Parker, Berck)

imposed a 5-day suspension, an IDP, and file expungement after two years. During the appeal meeting of September 13, 2017, Mr. Esper requested a verbal reprimand, nothing in his personnel file, no separate IDP, and the use of the Marzano Evaluation Model, and an offer to write about the incident apologizing for his "mistake." (See, **Exhibit I.**) After further consideration, the Executive Team discussed reducing his suspension to 4 days, eliminating the IDP and using the Marzano Evaluation Model, and expunging Mr. Esper's personnel file after two years. Mr. Esper rejected the District's disciplinary measure.

The level of discipline for Mr. Esper is within the discretion of the superintendent pursuant to Board Policy 1139. Mr. Soma, Mr. Parker, and Dr. Berck considered: 1) statements from Mr. Esper and Mr. Kolbusz; 2) the seriousness of the act and process of removing the rock; 3) no service call to maintenance to remove the rock; 4) the potential risk to the safety of students and others that may have been on school premises at the time; 5) Mr. Esper's responses to Mr. Soma's initial questions of what happened to the rock; 6) the level of suspension other administrators had received for discipline; and 7) Mr. Esper's lack of prior discipline and positive contributions as mitigating factors.

Based upon the preponderance of the evidence, it is reasonable to conclude that the Executive Team's decision-making process and proposed discipline for Mr. Esper were not arbitrary nor capricious and were within a principled range of reason.

Mr. Esper complains of an absence of "process" and "professionalism" citing, "[t]he feedback, investigation, and appeal process in my situation were sloppy, unprofessional and incoherent as conducted by Paul Soma, Jame McCall, Cindy Berck and Chris Parker." (Intv. 10-10-17; No. JE100517.) Mr. Esper also cites a lack of citation to any Board policy violation, an investigative report lacking specificity as to the August 8, 2017 Paul Soma conversation, and too-

severe discipline in excess of what other administrators received; and thus, any disciplinary measure should be rescinded. *Id.*

Mr. Esper was notified of the allegations when Mr. Parker interviewed him on August 31, 2017. At that time, Mr. Esper was offered, yet refused, Association representation. Likewise, Mr. Kolbusz was notified of the allegations when Dr. Berck interviewed him on August 31, 2017. Mr. Kolbusz was offered and declined Association representation. Mr. Parker issued written notice to Mr. Esper, Mr. Kolbusz, and their TCAA representatives, regarding dates, times, and locations for the September 7th and September 13th meetings.

Mr. Esper and Mr. Kolbusz were given a copy of their September 5, 2017 disciplinary memos at their respective September 7, 2017 meetings with Mr. Parker. TCAA President, Ryan Schrock, was present at Mr. Esper's and Mr. Kolbusz's September 7th and September 13th meetings.

The administrators and Mr. Schrock inquired as to an appeal, as such is not part of Board Policy 1139. An appeal process was developed and each administrator was given notice for an appeal meeting scheduled for September 13, 2017. The appeal meeting provided another opportunity to be heard, to provide additional information, and appeal their disciplinary measure.

The US Supreme Court has held that:

"An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and the opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd Of Educ v Loudermill*, 470 US 532, 542 (1985) (Internal citation omitted.) "We have described 'the root requirement' of the Due Process Clause as being 'that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interests.'" *Id.* (Emphasis in the original.) (Internal citation omitted.)

* * *

“The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.” *Id.* at 546.

Due process includes providing notice of an allegation and a hearing to state his/her account of the matter. *Gilbert v Homar*, 520 US 924 (1997).

Mr. Esper and Mr. Kolbusz were verbally notified of the allegations against them and each were provided an opportunity to respond at their respective August 31, 2017 interviews, and again at their September 7, 2017 disciplinary meetings. Pursuant to their request, each received an (individual) appeal meeting, held on September 13, 2017. The September 5, 2017, disciplinary memos were held in abeyance pending resolution of the appeal meetings on September 13, 2017. Mr. Kolbusz and Mr. Esper’s discipline continues to be held in abeyance, subject to Board of Education review and/or non-binding mediation, as provided for under the TCAA Master Agreement.

Based upon a preponderance of the evidence, no due process violation has been established. Violation of Board Policy by members of the Executive Team has not been established.

Charles Kolbusz

Mr. Kolbusz complains that the proposed discipline for his involvement in the removal of Spirit Rock is excessive. For Mr. Kolbusz’s involvement in the removal of Spirit Rock, the Executive Team (Soma, Parker, Berck) initially imposed a 3-day suspension, an IDP, and file expungement after two years. Mr. Kolbusz admitted his involvement to the Executive Team regarding the removal of Spirit Rock during the District’s investigation. Mr. Kolbusz, however, concealed his involvement to others when asked. (Intv. 10-24-17.)

During the appeal meeting of September 13, 2017, Mr. Kolbusz admitted his involvement and expressed sincere remorse for his actions. (Intvs. 10-16-17; 10-25-17.) After further

consideration, the Executive Team reduced his 3-day suspension to 2 days, eliminated the IDP, and determined the use of the Marzano Evaluation Model, and offered to expunge Mr. Kolbusz's personnel file after two years.

The level of discipline for Mr. Kolbusz is within the discretion of the superintendent pursuant to Board Policy 1139. Mr. Soma, Mr. Parker, and Dr. Berck considered: 1) statements from Mr. Esper and Mr. Kolbusz; 2) the seriousness of act and process of removing the rock; 3) no service call to maintenance to remove the rock; 4) the potential risk to the safety of students and others that may have been on school premises at the time; 5) the level of suspension proposed for Mr. Esper for his part in the removal of the rock, in that Mr. Kolbusz should receive less suspension; and 6) as mitigating factors: Mr. Kolbusz's candor while under the District's investigation, his lack of prior discipline and positive contributions.

Based upon the preponderance of the evidence, it is reasonable to conclude that the Executive Team's decision-making process and proposed discipline for Mr. Kolbusz, were not arbitrary nor capricious and were within a principled range of reason.

Mr. Kolbusz complains that during the Executive Team's investigation of him, references were made to prior WSH administrations and activities for which he had no part, and an "incorrect" statement in the District's "Investigation Results" report indicating that he did not know what happened to the rock. (Intv. 10-16-17; *See*, Exhibit B.) Special Counsel notes that no discipline was proposed for any prior conduct at the WSH that Mr. Kolbusz was not a part of. The District's "Investigation Results" Report, however, lacks specificity as to the statement:

"Both Joe Esper and Charles Kolbusz indicated there was no formal plan or directive as to how they were going to respond if questioned about the spirit rock, however, both responded the same way ~ that they did not know what happened to the spirit rock and that it was time to move on."

By all accounts, Mr. Kolbusz was candid when answering the Executive Team's questions during the District's investigation; however, he admitted to Special Counsel that when asked, he would respond "no comment" and "move on" and "were [sic] are moving on, it's not relevant, moving forward, etc. That is a response that we often recite when folks/parents/students ask questions on topics that are not educationally relevant to them." (Intv. 10-16-17; No. CK100417.) Such response is a deliberate omission of what happened to the rock.

The TCAA and Mr. Kolbusz complain the proposed transfer of him from Assistant Principal at West Senior High to East Middle School was improper, alleging that Executive Team members made statements, as "break up the team," arguing such is in violation of Board Policy 1130 - SCHOOL ADMINISTRATOR PLACEMENT. (Intv. 10-16-17; No. CK100417.) Executive Team members dispute the allegation that the proposed transfer was improper, stating that Mr. Kolbusz's proposed transfer was not for discipline, but to fill a vacancy at East Middle School; adding that the proposed transfer was only discussed at the conclusion of the September 7, 2017 meeting as to timing of the transfer – not for discipline. While, in one sense, the timing of the proposed transfer and the inscription on the September 5, 2017 disciplinary memo could be viewed as "suspicious," the evidence does not conclude any animus to support an improper motive.

Board Policy 1130 states, "The term "placement" shall include decisions involving the assignment and transfer of administrators as well as decisions involving the filling of vacant administrator positions with on staff administrators. These placement decisions are delegated to the Superintendent or his/her designee." Board Policy 1130 SCHOOL ADMINISTRATOR ASSIGNMENT AND TRANSFER - Administrative Guidelines, states, "Transfers between schools may be enacted by the Superintendent or his/her designee and within a school when the needs of students, the school or the District so require."

Board Policy 1130 Administrative Guidelines, states in relevant part:

- A. Involuntary Transfer Prior to effecting an involuntary transfer of an administrator to another school the Superintendent and Associate Superintendent shall be consulted regarding the contemplated move.

* * *

Further, the TCAA Master Agreement, Board Rights, Section 11.4, states,

Unless expressly provided otherwise in this agreement, the Board reserves the right to:

- a. direct the work of its employees; hire, promote, demote, transfer, assign, and retain employees in positions within the school district;

* * *

Accordingly, Board Policy 1130 and TCAA Master Agreement, vests administrator transfer authority in the Board and the superintendent.

Based upon the preponderance of the evidence, the Executive Team had reasonable grounds for their determinations. Accordingly, violation of Board Policy has not been established.

c) Administrators' Complaints Regarding Superintendent Soma's Media Communications

Mr. Esper complains that the superintendent's September statements to the press (i.e., on-line article dated September 16, 2017 and print articles dated September 17 and 19, 2017) are "unprofessional during an on-going investigation" and also "defaming, emotional and intentionally inaccurate, clearly intending to erode confidence in me and incite unrest in the community and at West Senior High." (10-10-17; No. JE100517.) Mr. Esper was concerned that the media had information not contained in his personnel file *Id.* Mr. Kolbusz also complained that the on-line article of September 16, 2017, "would lead people to believe that the rock was removed because of the needs of the administration and that was not the case." (Intv. 10-16-17; No.

CK100417.) Superintendent Soma reviewed the articles in question and advised Special Counsel that he spoke with individuals at both media sources. (Intv. 11-15-17.) Superintendent Soma added that he believes that they (media) “got it right” and that Mr. Esper did describe the rock as a “headache” and “distraction” during the August 8, 2017 conversation at the Boardman Building, and afterward. *Id.* Superintendent Soma continued, stating that he did not feel that he was “misquoted,” and his press statements are his “sentiments.” (Intv. 11-15-17.)

Special Counsel acknowledges the administrator’s complaints and the superintendent’s response; however, Special Counsel believes this issue to be outside the purview of engagement and thus refers this matter to the Board of Education.

2. Resignation of Former East Middle School Assistant Principal and His Return to Professional Teaching Position.

Mr. Ranney alleges that the District’s investigation questioning his behavior at Central Grade Elementary was flawed because the person who interviewed him is the supervisor of the witnesses, and the person he is alleged to have disparaged. Mr. Ranney alleges that he was “coerced” into resigning his position as Assistant Principal of East Middle School.

On or about August 1, 2017, Kirk Ranney was selected and hired as the Assistant Principal of East Middle School. (Intv. 10-18-17.) Mr. Ranney claims that in late July, 2017, as a parent he received a packet from the Central Grade Elementary school announcing the “PowerSchool Parent Portal . . . is available for access to real-time attendance, online district forms and the ability to view phone/email messages . . .” (Intv. 10-18-17; document withheld under FERPA.) Mr. Ranney added that the same packet included a generic letter, signed by Jame McCall, addressed to “Elementary School Families” announcing the registration process to enroll in “Extended Day” programs had changed. *Id.* (See, **Exhibit K** – District (McCall) letter re: “Extended Day.”) The letter informed the reader that three on-line forms are required to be completed, and in the event

that the site reached capacity, the [on-line] timestamps would determine the list. *Id.* (Exhibit K.) The letter also required that the “Child Information Record” (i.e., “final form”) must be completed during the open house to complete the enrollment process or dropped-off in the Student Services office. *Id.* (Exhibit K.)

Re: August 31, 2017

Statement of EMS [former] Assistant Principal Kirk Ranney

Mr. Ranney recalled that on August 31, 2017 at 6:00 p.m., he, with his wife and children, went to Central Grade Elementary School gym for Extended Day registration. (Intv. 10-18-17; No. KR100517.) Mr. Ranney described the school’s gym as being very loud with multiple tables and activities taking place, adding that the event “seemed to be chaotic.” *Id.* Mr. Ranney said that he believed he completed the registration process except for a “final form.” *Id.* Mr. Ranney said that when he submitted the form to District employee, Stephanie Wiley, she wrote down “6:02,” and he questioned if that was the “timestamp” for registration. *Id.* Mr. Ranney said that he tried to explain to Ms. Wiley that the process was confusing given that he had received email confirmation that the registration process was complete, with the exception of the final form. (Intv. 10-18-17; No. KR100517.) Mr. Ranney reported that Ms. Wiley tried to explain that the District’s computer was down. *Id.* According to Mr. Ranney, Ms. Wiley added that the person who had been involved with the on-line registration process had left the District. *Id.* Mr. Ranney said that Ms. Wiley informed him that the registration process was not complete until the final form was submitted, and that date and time on the final form would determine the final timestamp. (Intv. 10-18-17.)

Mr. Ranney asserted that he told Ms. Wiley that the later “timestamp” was “unacceptable.” (Intv. 10-18-17; No. KR100517.) Mr. Ranney claims that his wife was upset and questioned the registration process as well. *Id.* Mr. Ranney admits that he questioned Jame McCall’s letter and the registration process, but denied making any disparaging comments about her. *Id.* Mr. Ranney

stated that at no time during the Extended Day registration at Central Grade Elementary was he approached by any staff or administration, on or off duty, as to his conduct while interacting with District staff, nor did he feel that the staff member with which he interacted was upset about their conversation. (Intv. 10-18-17; No. KR100517.) Mr. Ranney stated that he and his family proceeded to a classroom and were home by 6:40 p.m. *Id.*

Mr. Ranney stated later that same evening he received a phone call from Associate Superintendent Jame McCall, and an email instructing him to report to the Board administrative center on September 1, 2017, at 11:00 a.m. for a “due process hearing that may result in discipline up to including termination,” also advising him that he had the “right to bring union representation.” *Id.* (See, **Exhibit L** - McCall email to Ranney dated August 31, 2017.) Ms. McCall also invited the lead principal [Colleen Smith] from EMS to attend. (**Exhibit L**.) Mr. Ranney claims that he sent an email to Ms. McCall asking what led to the hearing, but received no response. (Intv. 10-18-17; No. KR100517.)

Mr. Ranney stated that he called Ryan Schrock (TCAA representative), relayed the events of the evening, and asked him to attend the hearing. *Id.* (Colleen Smith stated that she called Mr. Ranney on August 31, 2017, advised him to state what happened, and told him to be prepared. (Intv. 11-10-17.) Ms. Smith advised Special Counsel that she is a TCAA Board official, but in regards to the meeting with Mr. Ranney, she was his supervisor, and Mr. Schrock was his union representation. *Id.*)

Re: August 31, 2017

Statement of Staff Member Stephanie Wiley

Ms. Wiley reported that she and her colleague, Dawn Smith, were at Central Grade Elementary on August 31, 2017 for the Extended Day registration. (Intv. 11-03-17.) Ms. Wiley reported that the gym was noisy and that the Extended Day on-line registration process was new

for the 2017-2018 school year. *Id.* She also reported that the person who had helped develop the on-line registration left the District prior to the open house registration. *Id.*

Ms. Wiley vividly recalls her encounter with Mr. Ranney, and she provided an email that she sent to Jame McCall that night. (Intv. 11-03-17; *See*, **Exhibit M** - Wiley email to McCall dated August 31, 2017.) Ms. Wiley described Mr. Ranney as upset and angry with the Extended Day registration process, and claimed that Mr. Ranney stated, “this is not right” when the “timestamp” may be August 31, 2017, rather than the on-line date. *Id.* She recalled that he waved his arms around and hit the table as he walked to her side of the table. *Id.* According to Ms. Wiley, Mr. Ranney was raising his voice, hand-gesturing, and making disparaging comments about the Extended Day registration process and Jame McCall. (Intv. 11-03-17; **Exhibit M**.) Ms. Wiley stated that Mr. Ranney paced back and forth and continued with his behavior for 10 minutes. *Id.* Ms. Wiley reported that teachers and others approached her afterward asking if she was “alright.” *Id.* Ms. Wiley reported that District employee, Dawn Smith, was also at the table trying to keep other parents calm. (Intv. 11-03-17.) Ms. Wiley added that had Mr. Ranney not identified himself as an Assistant Principal of East Middle School, she may have asked that he be removed from the gym. *Id.*

Statement of Associate Superintendent Jame McCall

Jame McCall is responsible for matters related to Extended Day programs. (Intv. 10-31-17.) Ms. McCall confirmed that the registration process changed for the 2017-2018 school year and that notices for the new process were sent to families in August. *Id.* She added that the process, at the time, could not be completed on-line because the final form had to be completed and turned in at the sites, including open houses scheduled at the District’s buildings. *Id.* Ms. McCall admitted that her office received a few complaints afterward, but these were relatively few. *Id.* Ms. McCall added that approximately 700 families were able to complete the registration process. *Id.*

Ms. McCall recalled she had two phone calls with Ms. Wiley on August 31, 2017, at approximately 7:25 p.m. and 7:56 p.m. (Intv. 10-31-17.) Ms. Wiley reported to her that Kirk Ranney was at the registration and became upset, waving his arms around, pounded the table, and that she (Wiley) attempted to move Mr. Ranney away from the crowd. *Id.* Ms. McCall asked Ms. Wiley to submit a summary report, and she agreed. (**Exhibit M.**) Ms. McCall spoke with Dawn Smith who reported that Mr. Ranney and his wife as upset. Dawn Smith also submitted an email regarding the incident. (Intv. 10-31-17.) (*See, Exhibit N – Dawn Smith email to McCall dated September 1, 2017.*³)

Ms. McCall confirmed that she talked with Kirk Ranney and sent him a follow-up email on August 31, 2017. (Intv. 10-31-17) (**Exhibit L.**) Ms. McCall told Mr. Ranney that he was required to report to the Boardman Building at 11:00 a.m., the following day, and advised him to contact Ryan Schrock. *Id.* Ms. McCall added that she would not engage in any questions and answers over the phone. (Intv. 10-31-17.)

Re: September 1, 2017

School District Investigation of Kirk Ranney and Discussion of His Return to Teaching

Dr. Berck reported that on September 1, 2017, Ms. McCall interviewed Mr. Ranney regarding his interactions with District staff members during the Extended Day registration and he was informed of the allegation that he was “out-of-line,” “very loud,” and “hand gesturing.” (Intv. 10-30-17.) Dr. Berck, Colleen Smith (Ranney’s direct supervisor), and Ryan Schrock were present. *Id.* Ms. McCall informed Mr. Ranney that the purpose of the meeting involved an incident that occurred the night prior at Central Grade School and requested his account of the event. *Id.*

³ Special Counsel was unable to interview Ms. Smith in-person as she was out of the District on several occasions. Accordingly, her email is included as it is a public record.

Mr. Ranney is reported to have complained to Ms. Wiley about the registration process. (**Exhibit M.**) Ms. McCall stated that Superintendent Soma requests that administrators, if critical of District operations, “complain up, not out.” *Id.* Ms. McCall stated that she asked Mr. Ranney if he was aware of this directive; Mr. Ranney indicated that he was aware of the directive. (Intvs. 10-18-17; 10-31-17.)

Ms. McCall recalled that Mr. Ranney stated that he did not raise his voice, explaining that he is a loud talker, but he would not be surprised if others reported that he did. (Intv. 10-31-17.) Ms. McCall noted that he did not expressly deny the allegations of his gym behavior. *Id.* Ms. McCall recalled that Mr. Ranney admitted that he did not handle the situation as an administrator should have and he expressed remorse. *Id.* Ms. McCall recalled that Mr. Ranney offered to apologize to Ms. Wiley, however, she advised him to not have contact during the investigation. *Id.*

Mr. Ranney stated that when Ms. McCall and Dr. Berck left the room, he told Mr. Schrock that he was afraid of losing his job. (Intv. 10-18-17; No. KR100517.) Mr. Ranney added that when Ms. McCall and Dr. Berck returned, Ms. McCall told him that he would begin a two-day suspension with pay to commence on September 5. *Id.* Mr. Ranney was advised that an investigation would begin and gym cameras would be reviewed. *Id.* According to Mr. Ranney, he was told to have no contact with any TCAPS employees except Dr. Berck, Mr. Schrock and Ms. Smith, and that he must attend a follow up meeting on September 6 to determine his discipline. (Intv. 10-18-17; No. KR100517.)

Mr. Ranney left the interview at approximately 11:40 a.m. (intvs. 10-18-17; 12-26-17) and Mr. Schrock, Ms. Colleen Smith, Dr. Berck, and Ms. McCall remained to discuss the situation and his gym behavior. (Intvs. 10-30-17; 10-31-17; 11-10-17; 12-26-17.) They also reviewed Ms. Wiley’s and Ms. Smith’s emails. (Intvs. 10-30-17; 10-31-17; 11-10-17; 12-26-17.) (*See, Exhibit M and Exhibit N.*) According to Ms. McCall, both Colleen Smith and Ryan Schrock agreed that

his behavior was unacceptable, adding that neither fought for him to remain as assistant principal. (Intv. 10-31-17.) Ms. McCall recalled that Colleen Smith questioned whether he was ready for the assistant principal position and if he should remain in the building after such behavior. (Intv. 10-31-17.) Ms. Colleen Smith recalled an event with Mr. Ranney after he was selected as assistant principal. (Intv. 11-10-17.) Ms. Smith recalled a dead Morning Dove near the entrance door of their building (East Middle School), and as others gathered around contemplating, Mr. Ranney walked around the bird and was not paying attention to the organization. *Id.* This struck Ms. Smith as Mr. Ranney not having attention to detail. *Id.* Both Ms. Smith and Mr. Schrock recalled a collective perception that Mr. Ranney was not ready for the assistant principal position. (Intv. 11-10-17.)

Ms. McCall, Dr. Berck, Mr. Schrock, and Ms. Smith then considered Mr. Ranney's possible return to a teaching position. (Intvs. 10-30-17; 10-31-17; 11-10-17.) The group discussed that Mr. Ranney would have the opportunity to resign his assistant principal position and return as a teacher. *Id.* At that time, Mr. Ranney's former position at Central Grade School was considered. (Intvs. 10-30-17; 10-31-17.) (Dr. Berck later contacted the building principal, however, it was learned that a new teacher was working out well and that Mr. Ranney's behavior during the Extended Day registration was the "buzz." (Intvs. 10-30-17; 12-26-17.))

Mr. Ranney reported that at 12:16 p.m., Mr. Schrock called him and asked him to consider resignation. (Intvs. 10-18-17; 10-31-17; 12-26-17; KR100517.) Mr. Ranney reported that Mr. Schrock stated that after speaking with Ms. McCall and Ms. Berck, it did not seem that it was "going to end well." (Intv. 10-18-17; No. KR100517.) (Mr. Schrock also indicated such to Special Counsel. (Intv. 11-10-17.) Notably, no information was presented to Special Counsel to support such speculation, as Mr. Schrock indicated that no conversation to discipline or terminate Mr. Ranney was held. *Id.*)

Mr. Ranney reported that Mr. Schrock told him he would likely regain his position at Central Grade if he acted quickly, and that he would still be considered for future administrative jobs, but he was “not ready now.” (Intv. 10-18-17; No. KR100517.)

Mr. Ranney stated that he called and left a message for Dr. Berck at 1:22 p.m. (No. KR100517; intv. 12-26-17.) Mr. Ranney reported that Dr. Berck returned his call at 2:02 p.m. and provided three options: 1. Play out the discipline process, 2. Resign to the TCEA (teaching position), 3. Resign from TCAPS. (Intv. 10-18-17; No. KR100517.)

According to Mr. Ranney, Dr. Berck told him that they would review the tapes, conduct interviews, and that the situation may become public. (No. KR100517.) Mr. Ranney added that she said any discipline would be in his file and could impact future opportunities outside the District. *Id.* According to Mr. Ranney, Dr. Berck offered that if he resigned his administrative position and returned to TCEA, there would be no notation in his file, no public record of discipline, and he would receive consideration for future administrative roles. *Id.* Mr. Ranney reported that Dr. Berck stated his decision should be conveyed before the end of the day. *Id.* Mr. Ranney asserts that Dr. Berck’s demeanor was “coercive in nature.” *Id.*

Mr. Ranney reported that he considered the options and called and left a message for Dr. Berck at 2:24 p.m. *Id.* Mr. Ranney reported that Dr. Berck returned his phone call at 3:13 and that she “walked me through the process of resignation,” submitting his resignation via email at 3:21 p.m. (Intv. 10-18-17; No. KR100517.) (*See, Exhibit O* - Ranney email to Berck dated September 1, 2017.)

Afterward, on September 6, 2017, Mr. Ranney met with Dr. Berck, Mr. Parker, Mr. Schrock, and Ms. Smith. Mr. Ranney was assigned as a Literacy Coach at Silver Lake and Long Lake Elementary Schools. (Intv. 11-03-17; No. KR100517.) Mr. Ranney reports that the Literacy Coach position is funded by Title II, and not guaranteed beyond the current school year. (No.

KR100517.) Mr. Ranney reports that Dr. Berck continued his leave until September 11 to “allow for communication and planning.” *Id.*

Re: Review of School District’s Investigation of Kirk Ranney

Statements of Human Resource Director Dr. Berck and Associate Superintendent Jame McCall

Dr. Berck reported that she was present for Mr. Ranney’s interview on September 1, 2017. (Intv. 10-30-17.) Dr. Berck stated that she did not participate in the prior Stephanie Wiley or Dawn Smith interviews, adding that she had read their email reports prior to Mr. Ranney’s interview. (Intv. 10-30-17.) She reported that both Mr. Schrock and Ms. Colleen Smith also read the email reports during Mr. Ranney’s interview. *Id.*

Dr. Berck recalled that Mr. Ranney appeared “evasive” during his interview as he appeared unable to understand his behavior or accurately describe the events of the prior night. *Id.* Dr. Berck recalled that both Mr. Schrock and Ms. Smith were taken aback by his behavior, and were questioning his readiness for the position. (Intvs. 10-30-17; 10-31-17.) Also of concern was how he would handle pressure. (Intv. 10-30-17.)

The group began discussing “what-ifs” and possible teaching positions. *Id.* There was consideration of offering Mr. Ranney his prior position at Central Grade. (Intvs. 10-30-17; 11-14-17.) Dr. Berck maintains that the group focused on Mr. Ranney’s return to teaching, and that no conversation ensued to terminate him from District employment. (Intv. 10-30-17; 12-26-17.) Dr. Berck stated that as the school year was starting the following week, they were making job offers to others over the weekend and needed to consider the schedules. *Id.*

Dr. Berck stated that Mr. Schrock called Mr. Ranney to “encourage” him to consider a teaching position. (Intv. 10-30-17.) Dr. Berck stated that she received a call from Mr. Ranney asking about his options. *Id.* Dr. Berck reported that it was Mr. Ranney who initiated the questions

about his options. *Id.* (Intv. 12-26-17.) Dr. Berck reported that she advised him that he could: allow the process to play out, and that if discipline is warranted, he may receive a “note in the file,” suspension, or termination from the assistant principal position. (Intvs. 10-30-17; 12-26-17.) Dr. Berck confirmed to Mr. Ranney that if disciplined, a record would be in his file. (Intv. 10-30-17.) Dr. Berck recalled that Mr. Ranney asked about teacher pay rates and if he would return to the step he left. *Id.* Dr. Berck told Mr. Ranney he would stay at the administration pay rate through September 8, and then return to his former rate. *Id.* According to Dr. Berck, Mr. Ranney asked how to resign, and she responded to submit a resignation email. *Id.* (See, **Exhibit O.**)

Dr. Berck disputes Mr. Ranney’s assertion that he was coerced or threatened into resigning his assistant principal position. (Intvs. 10-30-31-17; 12-26-17.) Dr. Berck stated that Mr. Ranney was never in jeopardy of being terminated from the District, only his fitness as assistant principal came into question after reviewing witness accounts, and there was an overall sense that he was not ready for the position of assistant principal. *Id.* Dr. Berck added that Mr. Ranney’s position at Central Grade had been filled, but that she and Mr. Parker combined two half-time positions into a full-time position. (Intvs. 10-31-17; 11-03-17; 12-26-17.)

Ms. McCall disputes Mr. Ranney’s assertion that the interview of him by her is flawed or biased. (Intv. 10-31-17.) Ms. McCall reported that interviewing Mr. Ranney was not unusual because the matter involved her staff, she was familiar with Mr. Ranney as he had participated in an administrator intern program (that she was involved with), and Mr. Parker was out of the District. *Id.* Ms. McCall added that neither the TCAA nor Mr. Ranney raised any concerns at the time of Mr. Ranney’s interview. *Id.*

Ms. McCall also disputes Mr. Ranney’s assertion that statements to “check the cameras” regarding his behavior were coercion. (Intv. 10-31-17.) Ms. McCall added that she would “pull films” as part of any investigation. *Id.* Ms. McCall later contacted an administrator and was

advised that the gym does not have video cameras; Ms. McCall states that she was unaware of that fact when Mr. Ranney was told that video would be reviewed, adding such was not meant in any threatening manner. *Id.*

Dr. Berck advised that the investigation into Mr. Ranney's behavior at the Central Grade building on August 31, 2017 was concluded as he resigned his assistant principal position. (Intvs. 10-30-17; 10-31-17.) Mr. Ranney's teaching skills were not in question, and the District values such to retain him on staff. *Id.* Dr. Berck added that Mr. Ranney would be considered for an administration position in the future. *Id.*

FINDINGS OF SPECIAL COUNSEL

It is unrefuted that Extended Day registration occurred at Central Grade on August 31, 2017. The gym was described as loud and noisy with several tables set up with multiple activities taking place. Ms. Wiley was present when Mr. Ranney sought to complete registration for his child. As the registration process unfolded, Mr. Ranney became frustrated and such was reported to Ms. McCall and an investigation followed.

Ms. Wiley appeared credible when interviewed by Special Counsel. Notably, Ms. Wiley's email report to Ms. McCall was written within a few short hours of the August 31 event. In addition, Ms. McCall received another report from Dawn Smith the following morning. Mr. Ranney also appeared credible when interviewed by Special Counsel. Mr. Ranney, however, did not have a contemporaneous report. In dispute is the level of Mr. Ranney's frustration and his actions during the registration process. District officials concluded their investigation when Mr. Ranney resigned his assistant principal position and requested his return to professional teaching. Without further information, Special Counsel presents no opinion as to Mr. Ranney's behavior during the Extended Day registration process on August 31, 2017.

As for the District's investigation of Mr. Ranney, two staff members provided an account of August 31; one report was received that night, another report was received the following morning. Ms. McCall called Mr. Ranney the night of the event, and followed up with him in an email instructing him to report the next day for a due process hearing. Ms. McCall recommended that Mr. Ranney contact his Association representation, which he did.

On the following day, September 1, 2017, Mr. Ranney reported as directed with Association representation. Mr. Ranney was advised of the nature of the allegation, and given an opportunity to respond. Mr. Ranney provided his account of the events at Central Grade; afterward, he was placed on paid suspension pending further investigation.

It is unrefuted that the group (McCall, Berck, Schrock and Colleen Smith) discussion turned from the investigation of Mr. Ranney's alleged gym behavior to his suitability as an assistant principal, and his return to teaching. Evidence submitted does not support that Mr. Ranney would have been terminated if he did not resign his assistant principal position. Significant is that Mr. Schrock, Mr. Ranney's TCAA representative, called him to consider resigning from assistant principal and return to professional teaching. Mr. Schrock advised Special Counsel that based upon the information they had, it was the right call for him (Ranney) to resign from the TCAA and return to teaching. (Intv. 11-10-17.) Mr. Schrock added that termination or discipline was not discussed during Mr. Ranney's interview because the issue of the video was still unresolved and any discipline would be discussed the following Wednesday. (Intv. 11-10-17.) Mr. Schrock and Ms. Smith added that there was no specific conversation that Mr. Ranney may lose his assistant principal position or District job, only a standard warning. *Id.* (I.e. that a matter "may lead to discipline up to termination.")

Mr. Ranney complains that he was not allowed to consult with colleagues, peers, mentors and support group while on paid suspension. (Intv. 10-18-17; No. KR100517.) Asserting, with

little experience, he “was not well equipped to understand the personal and organizational dynamic in play, ultimately impacting my ability to make a clear, informed and measured decision.” *Id.* Mr. Ranney, however, did consult with Mr. Schrock. Also, Mr. Ranney could have consulted with Ms. Colleen Smith, his principal, yet he did not.

Evidence has not been established that Mr. Ranney would have been terminated had he not resigned. Noteworthy is the amount of time Mr. Ranney had to consider his options. Three hours passed between Mr. Schrock’s phone conversation with Mr. Ranney and his email resignation to Dr. Berck. (*Assuming* a choice to resign or termination, given time to deliberate, courts have held that a choice to resign versus termination does not make the decision involuntary. (*See, e.g., Schindewolf v City of Brighton*, 107 F. Supp. 3d 804 (2015).)

Notwithstanding, evidence has not been established to support Mr. Ranney’s allegation that Dr. Berck’s explanations of his options before he resigned his position were improper or “coercive.”

Based upon a preponderance of the evidence, it is reasonable to conclude that no due process violation has been established, and no violation of Board Policy has been found.

3. Reassignment of Former Director of Human Resources, Christine Davis

Interview of Former Director of Human Resources, Christine Davis

Ms. Davis alleges that Superintendent Soma forced her to retire or face discipline. (Intvs. 11-06-17; 12-28-17.)

Ms. Davis stated that, although her position is listed in the TCAA letter of complaint dated September 20, 2017, she was not contacted by any member of the TCAA and did not know that she was part of their complaint until she read their letter in the press. (Intv. 11-06-17.) She then reached out and contacted Special Counsel on her own to express her employment concerns. *Id.*

Ms. Davis reported that she had been employed at the School District in the position of Director of Human Resources for approximately 24 years. (Intv. 11-06-17.) During that time, she worked with the Unions, personnel matters, policies and procedures. *Id.* Ms. Davis stated that the superintendent desired to move her out of her H. R. position and reassign her to special projects. *Id.*

Ms. Davis asserts that the superintendent did not give her a reason for reassignment, except that she “can’t keep up the pace” and complaints regarding her staff and customer service. (Intvs. 11-06-17; 12-28-17.) Ms. Davis asserted that the superintendent did not provide specific information for her to improve and was not given an opportunity for improvement. (Intv. 11-06-17.) Ms. Davis speculated that in the 2015-16 school year, a finance person at one of the middle schools was investigated and subsequently convicted of embezzlement. *Id.* Ms. Davis recalls that she and the superintendent had conversations regarding this matter, and she described him as angry when she had challenged him. *Id.* (Ms. Davis did not provide further information regarding this particular matter. *Id.*)

Ms. Davis stated that in her July 7, 2016 evaluation she was ranked as “effective,” a few points below “highly effective.” *Id.* Ms. Davis disagreed with the evaluation and “demanded” that Mr. Soma revise the evaluation. (Intv. 12-28-17.) Ms. Davis stated that the evaluation was revised adding two points to the “District Climate” category. *Id.* Ms. Davis acknowledged that the “7/7/16” evaluation was replaced with an improved evaluation, backdated to “6/30/16.” *Id.*

Ms. Davis recalled that she received an IDP and met with the superintendent and a consultant. (Intvs. 11-06-17; 12-28-17.) Ms. Davis added that the IDP was not implemented and discarded. *Id.* Ms. Davis stated that the Superintendent claimed it’s not her, it’s her department citing lack of customer service. *Id.* Ms. Davis stated that she provided data showing quality service and described the superintendent as angry upon receipt of the information. *Id.*

Ms. Davis maintains that the Superintendent did not provide any reason for potential discipline. (Intvs. 11-06-17; 12-28-17.) Ms. Davis indicated that if she wanted to continue with the District, she had to accept an assignment in the capacity of policy review at another building location. *Id.* Ms. Davis left the position of Director of Human Resources and accepted a position regarding policies and also supervising the Northern Michigan Partnership, which provides virtual curriculum in non-core instructional subjects to home-schooled students. *Id.* Ms. Davis stated that she did not go to the Board of Education because she was afraid of being fired, adding that the superintendent could restructure the school programs to terminate her. (Intv. 11-06-17.)

Ms. Davis asserts that her chief complaint is being “bullied” into retirement and reassigned out of her H. R. position without adequate reason from the superintendent. (Intvs. 11-06-17; 12-28-17.) Ms. Davis stated that the superintendent is a “bully” and “a hothead” and “people are scared to death of him.” *Id.*

Ms. Davis stated that it was disrespectful how the superintendent communicated the special project work assignment to her. (Intv. 11-06-17.) She stated that the superintendent left a memo dated September 22, 2016, in a sealed envelope addressed to her on her desk. *Id.* (See, **Exhibit P** - Soma Memo to Davis dated September 22, 2016.) Ms. Davis displayed an envelope with “Chris Davis, Private and Confidential” written across it. (Intv. 11-06-17.)

Ms. Davis stated that, even though she had submitted her retirement, she continues to work for the District in the position of the Home School Partnership, limited to the amount of earnings that she may receive as a school retiree. (Intv. 11-06-17.)

Interview of Associate Superintendent Jame McCall.

Ms. McCall was advised of the allegation that Ms. Davis claims that she was forced to retire or face discipline. (Intv. 11-14-17.) Ms. McCall stated that she observed no behavior to force, intimidate or harass Ms. Davis to resign or accept her current position. *Id.* Ms. McCall adds

that she was not aware of any concerns for Ms. Davis' reassignment. *Id.* Ms. McCall states that she is aware, however, of several concerns involving Ms. Davis' work performance. *Id.*

Ms. McCall recalls that the superintendent had received a complaint from the TCEA president that Ms. Davis had harassed and engaged in threatening behavior toward a teacher during the 2015-2016 school year. (Intv. 11-14-17.) Ms. McCall stated she was assigned to investigate the matter. *Id.* Ms. McCall stated that the TCEA complained that Ms. Davis engaged in conduct threatening to file tenure charges if the teacher failed to resign. *Id.* Ms. McCall stated that the affected teacher wanted to see the charges before she made a decision to resign. *Id.*

Ms. McCall conducted an investigation of Ms. Davis regarding her involvement and potential violations of Board Policy Number 3362 – Anti-Harassment, and 3362.1 – Threatening Behavior. (Intv. 11-14-17.) Ms. McCall reported that she did not find that Ms. Davis violated the aforementioned Board policies. *Id.* Ms. McCall added that the teacher did not face tenure charges, she was given an IDP and moved to another building. *Id.* The teacher later resigned. *Id.* Ms. McCall added that, while there were no findings that Ms. Davis violated the policies, she felt that her handling of the matter and skills regarding the investigation were below that which is expected of an Executive Team member. *Id.*

Interview of Dr. Cindy Berck

Dr. Berck was advised of the allegation that Ms. Davis claims she was forced into retirement/reassignment. (Intv. 11-14-17.) Dr. Berck stated that she never observed the superintendent argue with or force, intimidate or harass Ms. Davis in any regard. *Id.* Dr. Berck stated that teachers and administrators felt that she (Davis) was harassing others. *Id.* Dr. Berck recalled that the superintendent asked Ms. Davis for a strategic plan which she never produced. *Id.* Dr. Berck added that during Executive Team meetings, Ms. Davis and a former associate superintendent engaged in arguments that she described as distracting to the group. *Id.* Dr. Berck

recalls that Ms. Davis and the person have strong personalities, but that there were no observations of harassment or intimidation. *Id.* Dr. Berck recalled that the superintendent wanted to focus on improving Human Resources and the Business Department. *Id.* Dr. Berck added that both she and Ms. Davis felt defensive on the issue. *Id.*

Dr. Berck was in the building on the day when Superintendent Soma met with Ms. Davis at the Administration Building. (Intv. 11-14-17.) Dr. Berck was not present in the meeting with the superintendent and Ms. Davis in his office. *Id.* Mr. Parker met with Dr. Berck and the Human Resource team in another room. *Id.* Dr. Berck was later advised that the superintendent felt that a change was needed in the Executive Team, and he ordered no contact with Ms. Davis for four days to create separation and change. *Id.* Dr. Berck received permission from the superintendent and met with Ms. Davis. *Id.*

Interview of Superintendent Paul Soma

Superintendent Soma was advised of the allegation that Ms. Davis claims he forced her to retire or face discipline or reassignment. (Intv. 11-14-17.) Mr. Soma stated that his goal with the associate superintendents was to be more collaborative and team-oriented, and stated that Ms. Davis was not supportive of that goal. *Id.* Superintendent Soma stated that he felt that she was not performing at the level of an Executive Team member. *Id.* He summarized and stated that she did not have good relationships with others, and that she had used her position to “power over others.” *Id.* Superintendent Soma added that she was not willing to use improvement methodologies to modernize the H.R. Department. *Id.*

Superintendent Soma claims that he received calls from the unions and negative complaints from them. (Intv. 11-14-17.) The superintendent cited as an example, that in about May 2016, Ms. Davis was to provide assistance to the TCEA regarding insurance and that she had not timely provided the information to the them. *Id.* Mr. Soma added that he attended a meeting with Ms.

Davis and the union and he witnessed Ms. Davis being contentious toward the union and not negotiating. *Id.* Mr. Soma stated that Ms. Davis was responsible for setting the tone, and she was not displaying an attitude for helping others. *Id.*

Superintendent Soma stated that an IDP was prepared for Ms. Davis dated July 29, 2016. (Intv. 11-14-17.) Mr. Soma provided two areas of concern: “the need for full deployment of continuous improvement, paradigms and processes to support the District’s strategic and tactical needs” (True North) within various human resources, systems and processes”; and “the need for more mature leadership acumen.” *Id.* (See, **Exhibit Q** - Soma email to Davis dated August 1, 2016 with attached IDP.) Superintendent Soma stated that early in the IDP process, Ms. Davis did not make progress and a consultant was contacted for the IDP implementation and development. *Id.* Mr. Soma stated that he and the consultant met with Ms. Davis regarding the IDP. *Id.* Superintendent Soma asserted that Ms. Davis was not successful during the IDP process claiming that the consultant questioned her commitment to the process. (Intv. 11-14-17.) Mr. Soma claims that Ms. Davis had a lack of understanding with the TCEA regarding insurance. *Id.* He stated that when he consulted with Ms. Davis regarding a Letter of Agreement with the TCEA, she indicated that she was doing well with the TCEA president. *Id.* Mr. Soma disputed her claim, adding that the TCEA president complained that the Letter of Agreement was not completed. *Id.*

Superintendent Soma stated that he prepared a “Draft” memo regarding formal discipline addressed to Ms. Davis dated August 22, 2016, but he did not give it to her. (Intv. 11-14-17.) In the “Draft” memo, Mr. Soma alleges her failure to inform him of the serious matter involving rejection of an MOU by the staff at an elementary building. (Intv. 11-14-17.) Mr. Soma claims that he met with Ms. Davis on August 22, 2016, and had the memo in hand and communicated the contents to her. (Intv. 11-14-17.) The superintendent stated that the intent of the “Draft” was to convey his concerns to her, and that no improvement would lead to progressive discipline. (Intv.

11-14-17.) (Ms. Davis adamantly disputes that she ever received or discussed the “Draft” memo with Mr. Soma. (Intv. 12-28.17.) Ms. Davis admitted that an issue once existed regarding an MOU with the union, but could not recall any particulars. *Id.*)

Special Counsel asked Superintendent Soma if Ms. Davis was given a choice to resign or face discipline; Mr. Soma responded, “not in that manner.” *Id.* Mr. Soma answered that “she would not have been terminated or suspended had she not resigned.” *Id.*

Mr. Soma stated that he and Ms. Davis then negotiated her resignation, and by verbal agreement: the IDP would be suspended and removed from her personal file and the “7/7/16” evaluation would be replaced with an improved evaluation “backdated” to “6/30/16.” (Intv. 11-14-17.) The superintendent displayed the two evaluations: the “6/30/16” evaluation shows an improved rating of 55 over the “7/7/16” evaluation rating of 53. Also, the “6/30/16” evaluation, section “Domain 4 Cooperation and Collaboration Element 2, is revised from the superintendent’s earlier comments contained in the initial “7/7/16” evaluation regarding Ms. Davis’ interactions with the TCEA regarding the impact of benefit costs. (Intv. 11-14-17.) Superintendent Soma stated that Ms. Davis wanted “Domain 4” revised as part of their agreement. *Id.* Superintendent Soma stated that his comments in the “7/7/16” evaluation are valid, however, as part of their agreement, he revised Ms. Davis’ evaluation. (Intv. 11-14-17.) Mr. Soma stated that the “6/30/16” evaluation is the “formal” evaluation in her file. *Id.* (Note: Copies of the two evaluations may be obtained from the superintendent.) Superintendent Soma stated that he and Ms. Davis discussed discipline, but the “Draft” memo, dated August 22, 2016, had not been issued to her, adding that it had been “removed.” *Id.*

Superintendent Soma stated that Ms. Davis then submitted a retirement letter to him dated March 15, 2017, but gave to him in August 2016. (Intv. 11-14-17.) (See, **Exhibit R** - Chris Davis retirement letter dated “March 15, 2017.”) Superintendent Soma stated that he accepted her

resignation and signed his correspondence to her, dated “8/31/2016.” *Id.* (See, **Exhibit S** – Paul Soma acceptance of Ms. Davis “resignation.”) Dr. Berck issued correspondence to Ms. Davis, dated April 19, 2017, emailed on “4/20/17.” (Intv. 12-28-17.) (See, **Exhibit T** - Dr. Berck correspondence to Ms. Davis.)

Superintendent Soma asserted it was obvious that a change was necessary, claiming that Ms. Davis was not “aligned with the program.” (Intv. 11-14-17.) Mr. Soma offered by way of example “LEAN” – for continuous improvement. *Id.* Mr. Soma claims that Ms. Davis “did not share information with others, didn’t appear to respect others, and didn’t appear to empower those on the front-line.” *Id.*

Superintendent Soma stated that he prepared a memo addressed to Ms. Davis, dated September 22, 2016. (Intv. 11-14-17.) (**Exhibit P.**) Superintendent Soma and his assistant met with Ms. Davis on September 22, 2016. (Intv. 11-14-17.) Superintendent Soma asserted that he advised Ms. Davis that the District is the priority, and that he read the Work Assignment Memo to her, including that she would be working out of the Data Center, and to not have contact with her staff for several days. *Id.* (See, **Exhibit P.**) Special Counsel asked the superintendent if he left the September 22, 2016 Memo addressed to Ms. Davis on her desk or chair; the superintendent responded that he “may have.” (Intv. 11-14-17.)

Ms. Davis maintains that the superintendent did not have a basis to force her resignation from her position as H. R. Director. (Intv. 12-28-17.) She acknowledged that she submitted her March 15, 2017 retirement letter in August, 2016, “in response to him not going after me.” *Id.* Ms. Davis received the superintendent’s acceptance of her resignation letter, dated “8/31/2016.” *Id.* Ms. Davis also received Dr. Berck’s April 19, 2017 letter advising that the Board of Education acknowledged her retirement, and a copy of Dr. Berck’s memo to the superintendent regarding Ms. Davis’ compensation and benefits. *Id.* (See, **Exhibit U** - Dr. Berck Memo to Soma dated June

22, 2017.) Ms. Davis stated that she wrote instructions at the bottom of the memo regarding her compensation.

FINDINGS OF SPECIAL COUNSEL

While it is obvious that Ms. Davis and Superintendent Soma have profoundly disparate views of their encounters and communications regarding the change in Ms. Davis' status and assignment, without further, independent corroborations or support for one side or the other, it is not possible to reach a specific conclusion as to the truth of Ms. Davis' claim. Based upon the lack of unbiased information of this issue, Special Counsel can only speculate as to the validity of Ms. Davis' claim. Special Counsel declines to do so.

Based upon the preponderance of evidence, a violation of Board policy cannot be established.

CONCLUSION

The TCAA alleged a "pattern and practice of harassment and intimidation by the Executive Team onto the Administration Team."

Based upon the preponderance of the evidence, the actions of Superintendent Paul Soma and Executive Team members regarding their investigation of the removal of "Spirit Rock," and the proposed disciplinary measures for those involved, do not support the allegation.

Based upon the preponderance of the evidence, the actions of the Executive Team members regarding their investigation of Mr. Ranney regarding his alleged behavior during Extended Day registration, and his subsequent resignation and return to teaching, do not support the allegation.

The complaint allegation made by the former Director of Human Resources that she was forced to retire is not supported by the preponderance of the evidence.

Dated: January 2, 2018

Respectfully submitted,

BAUCKHAM, SPARKS, THALL, SEEGER
& KAUFMAN, P.C.

By:



David M. Revore

APPENDIX – A

EXHIBITS

Exhibit A – B. Amon emails to Thomas-Hill dated August 31, 2017 and September 1, 2017

Exhibit B - “Investigative Results West Senior High School August 31, 2017”

Exhibit C - Esper “Memorandum” dated September 5, 2017

Exhibit D - Kolbusz “Memorandum” dated September 5, 2017

Exhibit E – Two computer printouts for September 7, 2017 meeting date, time, location, and confirmed participants: Mr. Parker, Joe Esper, and Ryan Schrock at 9:30-10:00; and Mr. Parker, Charles Kolbusz, and Ryan Schrock at 10:30-11:00.

Exhibit F – Two computer printouts for September 13, 2017 meeting date, time, location, and confirmed participants: Charles Kolbusz, Chris Parker, Cindy Berck, Paul Soma, and Ryan Schrock, scheduled for 4:30 p.m. -5:30 p.m.; and Chris Parker, Cindy Berck, Paul Soma, and Ryan Schrock, and Joe Esper indicated as “?”; scheduled for 5:30 p.m. -6:30 p.m.

Exhibit G – Kolbusz “Memorandum” dated September 13, 2017

Exhibit H - “Appeals Process” outline

Exhibit I - “9/13/2017 Appeal Meeting”

Exhibit J - Esper “Memorandum” dated September 15, 2017

Exhibit K – District (McCall) letter re: “Extended Day”

Exhibit L - McCall email to Ranney dated August 31, 2017

Exhibit M - Wiley email to McCall dated August 31, 2017

Exhibit N - Smith email to McCall dated September 1, 2017

Exhibit O - Ranney email to Berck dated September 1, 2017

Exhibit P - Soma Memo to Davis dated September 22, 2016

Exhibit Q - Soma email to Davis dated August 1, 2016 with attached IDP

Exhibit R - Chris Davis retirement letter dated March 15, 2017, last day July 5, 2017

Exhibit S – Paul Soma acceptance of Chris Davis’ “resignation”

Exhibit T - Dr. Berck correspondence to Ms. Davis, dated April 19, 2017

Exhibit U - Berck Memo to Soma dated June 22, 2017

Exhibit A

B. Amon emails to Thomas-Hill dated August 31, 2017 and September 1, 2017



Christine Thomas-Hill <thomasch@tcapsstudent.net>

WSH Spirit Rock Info

1 message

Benjamin Amon <AmonBe@tcaps.net>

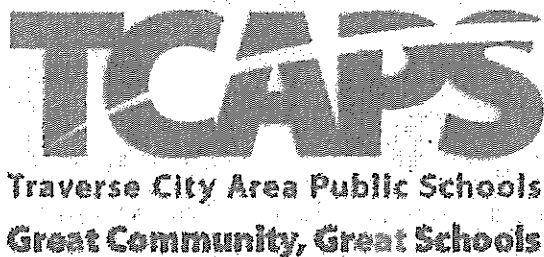
Thu, Aug 31, 2017 at 3:40 PM

Reply-To: AmonBe@tcaps.net

To: Christine Thomas-Hill <thomasch@tcaps.net>

Hey Christine, I believe the incident at West Senior High with the spirit rock being buried happened on Sunday July, 16, 2017 in the afternoon. The camera footage showed a red dodge pickup with a trailer and backhoe. The individual in the backhoe proceeded to start digging a hole next to the rock. The backhoe then pushed the rock into the hole then proceeded to fill the hole with the backhoe. The backhoe was then loaded back onto the trailer and the red dodge left. A little while later a green tractor "I believe a John Deere" showed up that same evening and started taking the excess dirt and taking it over by the track field "showed on the map in blue". The individual in the tractor tried cleaning up the mess that was made then left. I went to West Senior High later on Monday and saw what happened. When I had a chance I got on Milestone "the camera system" and saw what had happened with the rock and how they did it. I saw on Tuesday morning the vehicle that may have done it. I went and took a picture of the licence plate and saw that it was a administrator vehicle. Later that same day Tuesday, I got with my boss Tyson Burch showing him the information that I found. I checked on school dude regarding the rock and there were a couple I was able to find, the most recent was **Created By Jason Carmien Date Created 6/13/2017 1:38:45 PM** about having the spirit rock needing painting. That work was completed on 7/3/2017 7:56:34 AM. The other was School-dude #37278 in 2014/15 it looks like the rock was buried before. If you need anything else please let me know. The pictures are attached below.

Thanks Ben



Benjamin P. Amon

Westside Facilities Manager

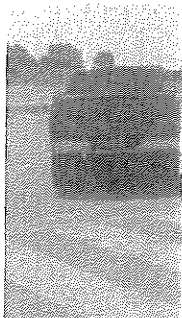
Amonbe@tcaps.net

Office: 231-933-5849

Cell: personal information

1212 Cass Rd, Traverse City, MI 49685

3 attachments



20170718_115829 (1).jpg
3132K

WHS-E119EXT East Side Student Entrance 2017-08-31 13-00-39.810.jpg
1459K



Christine Thomas-Hill <thomasch@tcapsstudent.net>

Re: WSH Spirit Rock Info

1 message

Benjamin Amon <AmonBe@tcaps.net>

Fri, Sep 1, 2017 at 6:05 AM

Reply-To: AmonBe@tcaps.net

To: Christine Thomas-Hill <thomasch@tcaps.net>

Hey Christine, I was thinking last night regarding the statement I gave and I wanted to be a little more accurate. There was a Red dodge pickup, trailer, but not a backhoe. It was a mini Excavator. I have attached a picture of what it looked like. Thanks

**Traverse City Area Public Schools****Great Community, Great Schools****Benjamin P. Amon****Westside Facilities Manager**Amonbe@tcaps.net**Office: 231-933-5849****Cell: personal information**

1212 Cass Rd, Traverse City, MI 49685

On Thu, Aug 31, 2017 at 3:40 PM, Benjamin Amon <AmonBe@tcaps.net> wrote:

Hey Christine, I believe the incident at West Senior High with the spirit rock being buried happened on Sunday July, 16, 2017 in the afternoon. The camera footage showed a red dodge pickup with a trailer and backhoe. The individual in the backhoe proceeded to start digging a hole next to the rock. The backhoe then pushed the rock into the hole then proceeded to fill the hole with the backhoe. The backhoe was then loaded back onto the trailer and the red dodge left. A little while later a green tractor "I believe a John Deere" showed up that same evening and started taking the excess dirt and taking it over by the track field "showed on the map in blue". The individual in the tractor tried cleaning up the mess that was made then left. I went to West Senior High later on Monday and saw what happened. When I had a chance I got on Milestone "the camera system" and saw what had happened with the rock and how they did it. I saw on Tuesday morning the vehicle that may have done it. I went and took a picture of the licence plate and saw that it was a administrator vehicle. Later that same day Tuesday, I got with my boss Tyson Burch showing him the information that I found. I checked on school dude regarding the rock and there were a couple I was able to find, the most recent was **Created By** Jason Carmien **Date Created** 6/13/2017 1:38:45 PM about having the spirit rock needing painting. That work was completed on 7/3/2017 7:56:34 AM. The other was School-dude #37278 in 2014/15 It looks like the rock was buried before. If you need anything else please let me know. The pictures are attached below. Thanks Ben

**Traverse City Area Public Schools****Great Community, Great Schools****Benjamin P. Amon****Westside Facilities Manager**Amonbe@tcaps.net**Office: 231-933-5849****personal information**

1212 Cass Rd, Traverse City, MI 49685

Mini Backhoe.jpg
64K

Exhibit B

"Investigative Results West Senior High School August 31, 2017"

**Investigation Results
West Senior High School
August 31, 2017**

Introduction

In August, 2017, a question arose regarding the whereabouts of the West Senior High School spirit rock. After initial questioning, there also appeared to be a lack of knowledge of how the spirit rock disappeared. An investigation was completed by Associate Superintendent Chris Parker and Executive Director Human Resources Cindy Berck on August 31, 2017. The purpose of the investigation was to determine if administrators were accurate when they indicated they knew nothing about the removal of the spirit rock, if direction was given to administrators about how to reply when questioned about the spirit rock's whereabouts, and whether administrators followed proper facilities and maintenance protocols regarding the removal of the spirit rock.

Investigation

The investigation included interviews with WSHS Principal Joe Esper and WSHS Assistant Principal Charles Kolbusz. Both were offered the opportunity to have a union representative present but declined.

Summary of Findings

The results of the investigation found that both administrators were inaccurate when they indicated they knew nothing about the removal of the spirit rock. Joe Esper was found not to have been transparent in sharing what he knew about the matter when questioned by Superintendent Soma. Both Joe Esper and Charles Kolbusz indicated there was no formal plan or directive as to how they were going to respond if questioned about the spirit rock, however, both responded the same way ~ that they did not know what happened to the spirit rock and that it was time to move on. Both administrators failed to follow proper facilities and maintenance protocols regarding removal of the spirit rock, which jeopardized the safety and security of staff, and had the potential to damage district property. The trust between central office staff and the WSHS administrative team was also jeopardized when it became clear that Joe Esper was not forthcoming with information relative to the spirit rock's removal.

Conclusion

While mistakes of failing to follow certain policies and procedures happen from time to time, the district expects that administrators are making sound judgement calls and being transparent and honest when questioned about situations. Charles Kolbusz's actions jeopardized his own safety and the safety of others. He failed to follow proper facilities and maintenance protocols. Joe Esper's actions, particularly failing to answer truthfully on what happened to the spirit rock when questioned directly by Superintendent Soma, is considered misconduct and insubordination.

Recommendation

Charles Kolbusz will receive a three day, unpaid suspension with a disciplinary letter to his file. He will also be placed on an Individualized Development Plan for 2017/18. Joe Esper will receive a five day, unpaid suspension with a disciplinary letter to his file. He will be placed on an Individualized Development Plan for 2017/18. The first day of unpaid time for both employees will be September 18, 2017. Chris Parker will work with each employee to schedule the balance of their unpaid days.

Respectfully submitted by:



Dr. Cindy J. Berck, Executive Director of Human Resources

9.1.17
Date

Exhibit C

Esper "Memorandum" dated September 5, 2017

MEMORANDUM

TO: Joe Esper, Principal
West Senior High School

FROM: Chris Parker, Associate Superintendent

DATE: September 5, 2017

SUBJECT: FIVE DAY UNPAID SUSPENSION

This letter is to confirm that you are receiving a five day unpaid suspension for failing to follow facilities and maintenance protocols and for failing to reveal your role and knowledge of the removal of the WSHS spirit rock when directly questioned by Superintendent Soma and your evasive answer during the initial part of the investigatory interview.

Based on your actions, you will serve a five day unpaid suspension. I will work with you to identify and schedule the unpaid days. Additionally, you will be placed on an Individualized Development Plan for the 2017-18 school year.

You are directed to follow all district protocols, board policies, and board guidelines in the future. You are also expected to exhibit the highest professional and ethical behavior as a TCAPS administrator and to communicate in a transparent and above board manner with your supervisor at all time. Failure to follow these directives will be investigated, and if substantiated, will result in further disciplinary action up to and including termination.

C: Personnel File

Exhibit D

Kolbusz "Memorandum" dated September 5, 2017

MEMORANDUM

TO: Charles Kolbusz, Assistant Principal
West Middle School

FROM: Chris Parker, Associate Superintendent

DATE: September 5, 2017

SUBJECT: THREE DAY UNPAID SUSPENSION

This letter is to confirm that you are receiving a three day unpaid suspension for failing to follow facilities and maintenance protocols and concealing your actions and involvement with the removal of the WSHS spirit rock.

Based on your actions, you will serve a three day unpaid suspension. The first day of the unpaid suspension will be on September 18, 2017. I will work with you to identify and schedule the other unpaid days. Additionally, you will be placed on an Individualized Development Plan for the 2017-18 School Year.

You are directed to follow all district protocols, board policies, and board guidelines in the future. You are also expected to exhibit the highest professional and ethical behavior as a TCAPS administrator. Failure to follow these directives will be investigated, and if substantiated, will result in further disciplinary action up to and including termination.

C: Personnel File

+ transfer to EMS
10/2/17

Exhibit E

Two computer printouts for September 7, 2017 meeting date, time, location, and confirmed participants: Mr. Parker, Joe Esper, and Ryan Schrock at 9:30-10:00; and Mr. Parker, Charles Kolbusz, and Ryan Schrock at 10:30-11:00.

← **SAVE** Discard changes Delete More Actions

👤 "Chris Parker" <parkerch@icapsstudent.net> is going Add a note or change your response

Parker / Esper

9/7/2017 9:30am to 10:00am 9/7/2017 Time zone

All day Repeat...

Event details Edit event

Where Parker's Office
map

Video call Add video call

Make it a Zoom Meeting

Calendar Chris Parker

Description Ryan, can you be available for this in person, by phone, or by hangout? Thanks!

Attachment Add attachment

Event color ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Notifications No notifications set
Add a notification

Show me as Available Busy

Visibility Calendar default Public Private

By default this event will follow the sharing settings of this calendar: event details will be visible to anyone who can see details of other events in this calendar. Learn more

[Publish event](#)

Guests Room 1

Add guests

Participants

Yes: 3, Maybe: 0, No: 0, Awaiting: 0

Chris Parker

✓

Joe Esper

✓

Ryan Schrock

✓

Suggested times

Guests can

modify event

invite others

see guest list

← **SAVE** Discard changes Delete More Actions

✓ "Chris Parker" <parkerch@tcapsstudent.net> is going Add a note or change your response

Parker / Kolbusz

9/7/2017 10:30am to 11:00am 9/7/2017 Time zone

All day Repeat...

Event details Find a link

Where Parker's Office
map

Video call Add video call

Make it a Zoom Meeting

Calendar Chris Parker

Description Ryan can you join in person, by phone, or by hangout? Thanks!

Attachment Add attachment

Event color ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Notifications No notifications set
Add a notification

Show me as ☐ Available ☒ Busy

Visibility ☒ Calendar default ☐ Public ☐ Private

By default this event will follow the sharing settings of this calendar: event details will be visible to anyone who can see details of other events in this calendar. Learn more
Publish event

Guests Rooms

Add guests

Participants Email

Yes: 2, Maybe: 0, Not: 0, Awaiting: 0

 Charles L. Kolbusz	✓
 Chris Parker	✓
 Ryan Schrock	✓

Suggested times

Guests can

☐ modify event
☒ invite others
☒ see guest list

Exhibit F

Two computer printouts for September 13, 2017 meeting date, time, location, and confirmed participants: Charles Kolbusz, Chris Parker, Cindy Berck, Paul Soma, and Ryan Schrock, scheduled for 4:30 p.m. -5:30 p.m.; and Chris Parker, Cindy Berck, Paul Soma, and Ryan Schrock, and Joe Esper indicated as "?"; scheduled for 5:30 p.m. -6:30 p.m.

← SAVE Discard changes Remove from this calendar More Actions

✓ "Chris Parker" <parkerch@ccapsstudent.net> is going Add a note or change your response

Personnel Meeting

Wed, September 13, 4:30pm – 5:30pm

Event details [Find a time](#)

Where Boardman Conf Rm A
[map](#)

Calendar Cindy Barck

Description Charles Kolbusz

Make it a Zoom Meeting

Event color ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Notifications No notifications set
[Add a notification](#)

Show me as ☒ Available ☐ Busy

Visibility ☒ Calendar default ☐ Public ☐ Private

By default this event will follow the sharing settings of this calendar. Event details will be visible to anyone who can see details of other events in this calendar. [Learn more](#)

[Publish event](#)

Guests Rooms

[Add guests](#)

Participants

Email

Yes: 5, Maybe: 0 No: 0, Awaiting: 0

 Charles L. Kolbusz	✓
 Chris Parker	✓
 Cindy Barck	✓
 Paul Sr. Soma	✓
 Ryan Schreck	✓

[Suggested times](#)

SAVE Discard changes Remove from this calendar More Actions

"Chris Parker" <parkerch@capssstudent.net> is going Add a note or change your response

Personnel Meeting

Wed, September 13, 5:30pm – 6:30pm

Event details [Add a note](#)

Where Boardman Conf Rm A
[map](#)

Calendar Cindy Berck

Description Joe Esper

Make it a Zoom Meeting

Event color

Notifications No notifications set

[Add a notification](#)

Show me as Available Busy

Visibility Calendar default Public Private

By default this event will follow the sharing settings of this calendar: event details will be visible to anyone who can see details of other events in this calendar. [Learn more](#)

[Publish event](#)

Guests Rooms

[Add guests](#)

Participants

Email

Yes: 4, Maybe: 1, No: 0, Answering: 0

Chris Parker	✓
Cindy Berck	✓
Paul Sr. Soma	✓
Ryan Schrock	✓
Joe Esper	?

Suggested times

Exhibit G

Kolbusz "Memorandum" dated September 13, 2017

MEMORANDUM

TO: Charles Kolbusz, Assistant Principal
West Middle School

FROM: Chris Parker, Associate Superintendent

DATE: September 13, 2017

SUBJECT: TWO DAY UNPAID SUSPENSION

This letter is to confirm that you are receiving a two day unpaid suspension for failing to follow facilities and maintenance protocols and concealing your actions and involvement with the removal of the WSHS spirit rock.

Based on your actions, you will serve a two day unpaid suspension. I will work with you to identify and schedule the unpaid days.

You are directed to follow all district protocols, board policies, and board guidelines in the future. You are also expected to exhibit the highest professional and ethical behavior as a TCAPS administrator. Failure to follow these directives will be investigated, and if substantiated, will result in further disciplinary action up to and including termination.

C: Personnel File

Exhibit H
“Appeals Process” outline

Appeal Process
Mtg 9.13.17

Welcome Attendees

An HR rep will facilitate the hearing and take notes.

Confirm that the appeal hearing is a result of a request by the employee and the purpose is two-fold

1. that the employee has the opportunity to share his/her thoughts on the disciplinary action, and
2. that the employee has the opportunity to appeal for reconsideration of such disciplinary action

An appeal hearing is not the opportunity for a re-hearing of the original case, but to consider the grounds for an appeal (consider fairness, reasonableness, etc.)

It is the employee's responsibility to draw attention to any relevant evidence that should be considered in relation to the appeal.

The appeal panel may ask questions/seek clarification as necessary.

The employee will be given the opportunity to make a closing statement.

The employee's supervisor will also be given the opportunity to make a closing statement.

If a decision can be made the same day regarding the appeal, a brief adjournment will be called.

If more information is required, a date will be determined for a follow-up meeting.

The outcome of an appeal hearing may be:

1. The appeal is upheld
2. The appeal is rejected
3. An agreement is reached on a modification of the original disciplinary action

The outcome of the hearing will be confirmed in writing within 7 days.

A summary of the notes will be provided upon request.

Confirm the employee has received any documents previously requested

Exhibit I
"9/13/2017 Appeal Meeting"

1. I own my mistake

2. The consequence for this first offense is not reasonable and I cannot accept it

3. What's best going forward?

9/8/2017 Disciplinary Action	9/12/2017 Proposed Disciplinary Solution
5 day unpaid suspension	Verbal reprimand
Disciplinary letter in personal file (letter has incorrect information)	Option to follow up verbal reprimand with an e-mail – not to be placed in personnel file
Individualized Development Plan (IDP is vague and contains unmeasurable goals)	No separate IDP. Use Marzano School Leadership evaluation model and Growth Plan that I am State-required to use this year to set specific, measurable goals. This will be a more accurate way to assess my leadership.
No communication plan to own mistake in front of principals, staff, or parents. No restorative component.	Develop a specific communication system/expectation for communicating with Executive Team - Who - What information - When - How
	Apology/own my mistake in front of principals and WSH staff and in blog to parents.

Next steps?

Exhibit J

Esper "Memorandum" dated September 15, 2017

Dr. Cindy J. Berck
Executive Director, Human Resources

Jody Hansen
Executive Assistant

MEMORANDUM

TO: Joe Esper, Principal
West Senior High School

FROM: Dr. Cindy J. Berck, Executive Director
Human Resources



DATE: September 15, 2017

SUBJECT: FIVE DAY UNPAID SUSPENSION

Pursuant to a conversation with Associate Superintendent Chris Parker earlier this week, I wanted to confirm that your September 5, 2017 memo has been edited to remove the sentence that the first of your five unpaid days will be on Monday, September 18, 2017. As I understand it, Chris indicated you may be in attendance at work on Monday, and he will work with you to schedule your unpaid days in the future.

The attached letter is a copy for your records. Please let me know if you have any questions.

Exhibit K

District (McCall) letter re: "Extended Day"

Dear Elementary School Families,

The registration process for families wishing to enroll in the 2017-2018 school year Extended Day programs has changed. TCAPS has developed an online registration system that is designed to reduce the amount of paperwork families need to fill out in order to enroll. We hope you will find this change helpful and that it will save you time in the future.

In this packet, you will find important information that is necessary to complete the registration process, including a unique PIN number that is only for your child. Included you will find a link, which will guide you through the process of activating your online account. Next you will find the directions to help you access the online Extended Day program registration forms. You will need to complete all three online forms. These forms are dated and timestamped. In the event that the site you are registering for reaches State of Michigan Licensing building capacity, we will use the timestamps to determine the lists.

Please note that you will need to complete a Child Information Record during the open house or you will need to drop the document off in the Student Services office (412 Webster St.) in order to complete the enrollment process. The State of Michigan requires it to be completed in the paper form. We cannot allow children to attend Extended Day Programs until this form is completed and on file.

Please note the following important dates:

- | | |
|---|---|
| July 31st | The Parent Portal will be open for families to begin Extended Day registration. |
| August 7th | TCAPS will host two open houses for Extended Day registration. Technology and support for families wishing to enroll will be offered at East Middle School and West Middle School from 3pm – 7pm. Please plan to bring your letter documenting your child's unique PIN number. |
| August 15th | Online Extended Day registration closes at midnight. |
| August 30th-31st | Late registration opens on August 30 th and closes at midnight on the 31 st . <i>Late registration may prevent your child from being able to immediately attend a program at the start of the school year. Please make every effort to be registered by August 15th.</i> |

We look forward to the opportunity to work with your child and family this school year. We also appreciate your patience as we bring this new system on-line in hopes to better serve you.

Sincerely,

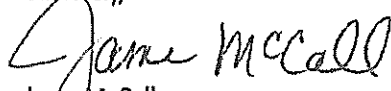

 Jame McCall

Exhibit L

McCall email to Ranney dated August 31, 2017

10/23/2017

TCAPS Students Mail - Due process meeting



Jame McCall <mccallja@tcapsstudent.net>

Due process meeting

1 message

Jame McCall <mccallja@tcapsstudent.net>
To: RanneyKJ@tcaps.net
Cc: Colleen Smith <smithco@tcaps.net>

Thu, Aug 31, 2017 at 8:29 PM

Kirk,

I am documenting the phone call I just made informing you of a due process meeting scheduled tomorrow at 11:00 a.m. at Board man.

Because this meeting may end in disciplinary action up to and including termination, you have a right to bring union representation. I have also invited the lead principal from EMS to join us.

Exhibit M

Wiley email to McCall dated August 31, 2017



Jame McCall <mccallja@tcapsstudent.net>

Incident at Central Grade

1 message

Stephanie Wiley <wileyst@tcaps.net>

Thu, Aug 31, 2017 at 10:51 PM

Reply-To: wileyst@tcaps.net

To: Jame McCall <mccallja@tcapsstudent.net>

Jame,

As requested, here is my account of the incident with Mr. Ranney at Central Grade School during the open house.

I was working with families to answer their Extended Day questions. Mr. Ranney approached the table and told me that he had registered his children through the on-line portal but hadn't yet filled out the Child Information Record. He handed the completed form to me and I wrote the time on the top of his sheet. He asked why I was doing that, and I told him that it was because people who were just getting their paperwork into us, weren't guaranteed a spot in ED, and that because he was one of the first in the line, he would have a better chance of being able to schedule in the first week. He became obviously agitated.

He then said that he had registered months before so he should have THAT timestamp. I tried to explain that in the letter that was sent out, and on the actual portal directions, it was made clear that all four pieces had to be submitted in order to reserve a family's schedule the first week of school. But that seemed to agitate him more. He rolled his eyes and began to walk away in anger a few times. It was very obvious to all who could see him that he was very worked up.

Mr. Ranney then went on to say that the letter was convoluted and very difficult to understand. And that there was nothing on the on-line forms to indicate that they wouldn't have a place in ED the first week and that there was no communication sent out explaining the CIR piece of the registration. When I told him, very matter of factly that it was there, he told me that it wasn't. He continued with his rant saying that we were obviously very disorganized and that our communication was terrible. He went on to say that "the letter that Jame McCall sent out" was terrible. He questioned whether or not she had any idea of how to communicate at all because this was awful. He continued to criticize our communication and capability of the department.

I kept trying to move Mr. Ranney farther to the side, as the families (most of whom who were frustrated at the long wait) could hear him, and at the least, they could see his anger. At some point Mr. Ranney told me his position with the district - associate principal at EMS. I told him, that since he was with the district, I hoped he could understand that we were trying our best to accommodate all of our families. I explained to him that we had licensing watching our every move, and this was the best way we could find tot ry to make sure we were in compliance. He told me that it wasn't really his concern. We should have figured this out before the open house and communicated that to the families. I told him that we were working overtime, nights and weekends, to try to make this happen, and that we were doing our best.

He asked who was actually in charge of this program. I explained that we had lost the person in charge and that many of us were making it work. He said obviously not. And then he said, so no one is really running this thing. I told him that in the end, Jame McCall was the one in charge and making the decisions about policy and we were going to follow that. It was the best way for us to protect all of the families that depended on ED. Again, there was a scoff, an eye roll and he began to walk away in anger.

At some point, Mr. Ranney's wife came into the conversation. Mrs. Ranney was equally angry and critical. I continued to explain that we couldn't just staff based on who might show up. We had to staff the program for who we knew would be there. And if all the paperwork wasn't into our office, we couldn't include that child in the program. He then, in a more raised voice, said again that he didn't know that the CIR was a required piece because we didn't communicate that.

I continued to tell him, once again because he was part of our district, that in addition to everything else, we were having issues finding qualified staff. And because of that, we had to have notice of what children were coming to ED so that we could make sure we had the proper staff to remain within the licensing guidelines. That the state licensing requirements were very specific about who could run/work with the program.

I tried to tell Mr. Ranney that I heard him, and all the other parents who were having a difficult time adjusting to the updated process. That we were doing our best to communicate and make this work for our families. I told him that I understood his frustration, but the licensing rules were clear and we had to find a way to operate in this framework. I explained that I, too, was a working mom. I understood his frustration. I told him that since he worked for the district, I

10/23/2017

TCAPS Students Mail - Incident at Central Grade

knew he had Jame McCall's email. That he could reach out to her with his frustration. Mr. Ranney's response was to say that he would feel really guilty doing that knowing that his child got into the program because of his position with the district and some other family's child wouldn't not. I explained that wasn't my point - I was simply saying that he could, as another Administrator in the district, have some constructive input for Jame.

This seemed to put both he and his wife over the edge. They shook their heads and walked away, very obviously, angry. Many people in the line commented on the incident to me. I will say that twice Mr. Ranney said that he had taken enough of my time and had held up the line for too long. I would to try to end the conversation by again apologizing that he was having this difficulty and that we would do our best to accommodate him. But that would get him going again. The whole incident probably occurred over a 10-15 minute period of time. The gym was very noisy, but even if he wasn't overheard, his anger and frustration was obvious. Instead of calm, knowing where and how to reach our office at an appropriate time, he chose to fuel other parents who were frustrated. Because he was one of the first in the line, he seemed to set an example for how others could treat us. He set a very negative tone that was incredibly unexpected for a fellow TCAPS employee.

If I can answer any questions, please don't hesitate to contact me.

Sincerely,

Stephanie

—
Stephanie Wiley
Administrative Assistant
Student Services/Health Services
Traverse City Area Public Schools
(231) 933-1792
WileySt@tcaps.net

Confidentiality Notice: This message, including any attachments is intended solely for the use of the named recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure, or distribution of this communication(s) is expressly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy any and all copies of the original message.

Please do not forward this e-mail message unless my permission is obtained.

Exhibit N

Smith email to McCall dated September 1, 2017



Jame McCall <mccallja@tcapsstudent.net>

Re: Extended Day - C

1 message

Dawn Smith <SmithDa@tcaps.net>

Fri, Sep 1, 2017 at 8:46 AM

Reply-To: SmithDa@tcaps.net

To: Jame McCall <mccallja@tcapsstudent.net>

I'm thinking it may have been 5 minutes - but am guessing due to how busy we were. There were many, many (30 or more) people in line during this. It was so noisy in the gym that only people directly around them heard the conversation - my observation only. That just really was not the time/place for that conversation to take place and I just wish the whole thing didn't happen because I sincerely like Kirk as a person and co-worker.

Thanks for inquiring about Jim - docs are trying to get a schedule worked out to try again! May be a week - or a month (who knows). They've prescribed meds to help with discomfort in the meantime at least....

On Fri, Sep 1, 2017 at 8:38 AM, Jame McCall <mccallja@tcapsstudent.net> wrote:

Dawn,

Thank you for noting what you saw. Can you tell me the length of the interaction and the result? Meaning were other families near impact on staff etc.

Thank you for the last paragraph. I understand documenting what was done may have been hard for you. It is never comfortable however, as a system we must act as if we represent the system at all times.

Please answer the other questions for me.

Hope your husband gets some great news this weekend.

Sent from my iPhone

On Sep 1, 2017, at 6:55 AM, Dawn Smith <SmithDa@tcaps.net> wrote:

Jame, as we were swamped at our table at the ED table at CE yesterday evening, I did not witness a whole lot during the time that Kirk Ranney was speaking with Stephanie. I did hear a raised voice and looked over and was surprised that it looked as though there was some sort of disagreement between Kirk and Stephanie. The raised voice and body language indicated Kirk was not pleased with information presented to him about the extended day process. I believe that Stephanie and I were telling ALL families the same thing about service not being guaranteed due to lack of staffing and state regulations/ratios. It was disappointing that this conversation could not have taken place more privately due to the number of families present and all of us being TCAPS staff. The uncertainty of the number of families we will be able to accommodate is surely stressful on all families.

In the years that I have worked with Kirk at CE, he has been calm, courteous and professional in many crisis situations. He is always friendly to staff, families and students. We have had a great working relationship and what happened yesterday was totally out of character for him. I have always had the utmost respect for him personally and professionally as he has always been very helpful at CE and as a CE staff member I was sad to see him move on to EMS, but happy for the promotion for him!

Let me know if you have further questions.

Dawn

—
Dawn Smith
Childcare Billing
(231) 933-1771

10/23/2017

TCAPS Students Mail - Re: Extended Day - C

—
Dawn Smith
Childcare Billing
(231) 933-1771

Exhibit O

Ranney email to Berck dated September 1, 2017

10/23/2017

TCAPS Students Mail - READ: Resignation



Cindy Berck <berckci@tcapsstudent.net>

READ: Resignation

1 message

Kirk Ranney <RanneyKi@tcaps.net>

Fri, Sep 1, 2017 at 3:21 PM

Reply-To: RanneyKi@tcaps.net

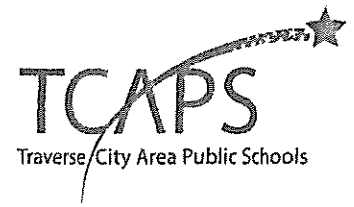
To: Cindy Berck <berckci@tcaps.net>

This email confirms our conversation from earlier today. As we discussed I am resigning my TCAA Assistant Principal position and am requesting to rescind my resignation as math interventionist at Central Grade School. I would appreciate the opportunity to return to Central Grade School or any other math interventionist position within the district.

Kirk Ranney
Assistant Principal
East Middle School
Traverse City Area Public Schools
231-933-7393

Exhibit P
Soma Memo to Davis dated September 22, 2016

Memo



TO: Chris Davis
FROM: Paul Soma, Superintendent 
DATE: September 22, 2016
RE: Work Assignment – Special Projects

Paul A. Soma
Superintendent
Keena Tibbetts
Executive Assistant

I would like to make use of your knowledge of district policy and ask that you conduct a comprehensive review of the Board's Policies, Guidelines and Bylaws. There are a number of policies that require thoughtful review. Additionally, it is important that our policies align with the work underway in relation to the MI-Excel Rapid Acceleration Blueprint. This is important work and will require your undivided attention.

To that end, and in order to create space for you to concentrate on this work without interruption, effective immediately I am requiring all staff currently reporting to you now directly report to me. Additionally, I am requiring that you conduct this work out of your new office, which will be located at the Sabin Data Center. Keena Tibbetts will assist with your administrative needs.

I would also like you to continue to attend the GT County Drug Free Task Force and the TCAPS Nutrition and Wellness Policy Committee. I feel there are opportunities within both of these committees to make substantial positive impact on the lives of our students. Additionally, please provide me with a list of duties that you currently are responsible for so that I can make plans for uninterrupted execution of those duties.

In order to limit disruption such a change can have on a department, I am directing you not to speak to the Human Resources Department staff any time within the next four days, and to have only limited contact after that so that they and you can focus on the tasks at hand. Please plan to clear your current office on Monday, September 26th at 5:00 p.m. Christine Thomas-Hill will be there to assist.

Please work from home on both Friday, September 23rd and Monday, September 26th while we prepare your new work space. Your new work assignment will begin at your new office at the Sabin Data Center, on Tuesday, September 27, 2016.

I look forward to continuing to work directly with you as you concentrate on the important projects outlined above.

Exhibit Q

Soma email to Davis dated August 1, 2016 with attached IDP

Davis, Chris

From: Soma, Paul
Sent: Monday, August 01, 2016 8:19 AM
To: Davis, Chris
Subject: IDP
Attachments: CD IDP.docx

Chris,

Attached please find a draft of the IDP I developed. This plan was developed based on discussions you and I have had, the Continuous Improvement Plan that you sent to me, and on discussions you and I have had with Shannon about the work of the HR department and how it may be improved. Please consider this document a draft until you and I have a chance to discuss. I am open to modifications and/or improvements to this plan based on your input or suggestions.

The overall goals for improvement that I have tried to capture in this document center around Leadership, Process Improvement, and Objective Reflection based on Feedback. It is important to remember that these goals are for you individually, but that in your role as Executive Director of HR, you are responsible for the performance of your department. Your success therefore is inextricably tied to and associated with the success of your department.

I believe the dates that I have suggested for completion of these goals are appropriate. It is important to note that some of these goals identify the creation of a plan. When that plan is created, it will spell out a "do" list that will have action steps with target dates. Such dates will be equally important to the dates spelled out formally in this plan for ultimate success of the plan.

I don't believe you can start soon enough monitoring the impact of and service mentality of your department. I am aware of high level frustration resulting from the perceived inflexibility of your department in the scheduling of Middle School Principal interviews as recently as last week. Given the direct conversations we have had around this very issue, I am surprised and disappointed that such frustration occurred. I am aware that you intervened once this issue was raised to your level, but I hope you understand the problem of you having to intervene on an issue that seemed as if it could have been appropriately handled at a lower level. Let's discuss this circumstance the next time we meet. I also believe you should reflect on the fact that I had to create this IDP document, and that such a form was not available from your department for distribution if needed. This causes me to reflect on exactly what forms are being used for this purpose, or perhaps there is no consistency in this area?

As I spell out in the IDP, it is my plan to informally reflect on progress with you on a regular basis, and further to reflect formally by November 1 (interim assessment) and February 1 2017 (final assessment).

Finally, as you will see in the document, it seems like "Anticipated Measurable Evidence" is similar for both broad categories of goals so you will see some redundancy in these sections. Again, I am open to improving this prior to the final document being formally put in place as witnessed by our signatures.

Thanks for your initial efforts to get rolling on this. I believe you are committed to this plan and I look forward to successful completion of it.

I am looking forward to talking to you formally about this on Thursday, and would like to have the final document signed at that time.

Thanks

Paul

July 29, 2016

Dear Chris

**RE: Performance Improvement Plan from August 1, 2016-January 31, 2017
for Chris Davis, Executive Director of Human Resources & Labor Relations
by Paul Soma, Superintendent of Schools, Traverse City Area Public Schools**

As we discussed in your recent Employee Evaluation meeting, although you have demonstrated some of the skills and abilities required to perform the duties the Executive Director of Human Resources and Labor Relations of Traverse City Area Public Schools, you do not meet my executive team performance expectations on a consistent basis.

There are two areas of concern: 1) the need for full deployment of continuous improvement paradigms and processes to support the District's strategic and tactical needs (True North) within various human resources systems and processes and 2) the need for more mature leadership acumen. Your position requires these outcomes as a result of your performance. Therefore, immediate and sustained improvement is needed. I will make consulting and coaching services available to support you in this challenge.

The following Performance Improvement Plan is designed to clarify my performance expectations for you for the time period August 1, 2016 through January 31, 2017. It is a supplement to, not a replacement for, the Executive Director's of Human Resources and Labor Relations job description, which is attached at the end of this document. You are expected to demonstrate the performance expectations that are listed below. You will meet with me on a monthly basis as scheduled to review your performance. Shannon Flumerfelt, your consultant and coach, will join in these performance review meetings, as designated by me. A final performance review meeting will be determined for January 2017. This plan may be modified as necessary during this period, depending on your progress.

Regards

Paul Soma
Superintendent of Schools
Traverse City Area Public Schools
Attachments: Job Description Executive Director Human Resources & Labor Relations,
Employee Improvement Plan

Performance Improvement Plan

The following Performance Improvement Plan identifies two areas of improvement with specific goals with dates for completion, strategies/tasks/activities, anticipated measurable evidence, and support and resources.

- 1) Paradigm and Process Improvements with Demonstration of Authentic, Complete Continuous Improvement for Six Projects with Goals as:
 - a) Employee Onboarding Project/Completion December 16, 2016
Goal: The completion of 5S sustainability of a fully improved onboarding process through a team effort to create critical stakeholder satisfaction through an error-free onboarding experience for all stakeholders
 - b) Asset Management Project/Completion December 16, 2016
Goal: The completion of 5S sustainability of a fully improved asset management process through a team effort, including Technology and Financial Services, to create critical stakeholder satisfaction through improved service delivery regarding employee asset allocation and full asset recovery for employee asset retrieval
 - c) Employee Training, Development Project/Completion December 16, 2016
Goal: Initiation of 5S shining of a fully improved employee training and development process through a team effort to create critical stakeholder satisfaction so that district social capital is recognized and leveraged for all staff, faculty and administrators through planned development programs as well as contingency and succession planning
 - d) Employee Offboarding Project/Completion December 16, 2016
Goal: The completion of 5S sustainability of a fully improved offboarding process through a team effort to create critical stakeholder satisfaction through error-free offboarding processes
 - e) Feedback Loops for Better Customer Service Project/Completion December 16, 2016
Goal: The completion of 5S standardization of a fully improved feedback process through a team effort to create assurance that data-driven continuous improvement will ensue on an ongoing and annual basis a series of just-in-time surveys and internal feedback mechanisms for Human Resources and Labor Relations processes and systems
 - f) Technical System Inefficiency Improvements Project/Completion December 16, 2016
Goal: The completion of zero-defect improvement and appropriate automation of all technical and mechanized systems used for human resources and labor relations functions through a team effort to create confidence in these systems in user friendliness, construct validity and result reliability.

Strategies, Tasks, Activities:

For all goals listed above, a calendar of team-based activities has been developed. Team-based work consists of Lean Task Force planning activities, meetings and support functions. In addition, individual activities may include preparing, arranging, researching, reflecting and updating thinking, actions and documents. All goals include intense consultative interactions around preparing and planning, deploying and debriefing. Monthly update and review meetings will be held with the Superintendent to ascertain progress.

Measurable Evidence:

For all goals listed above, a series of A3s will be developed, updated and vetted with various data sets from Lean Teams, designated District stakeholders, pre-interim-post consultant interviews, observations and artifacts of learning and work, as well as timely, high-quality deliverables as specified in the goal statements above.

Support, Resources:

For all goals listed above, consulting and coaching onsite and with just-in-time phone services are provided so that appropriate planning and analyses, team work and leadership modeling, experimenting, observing and debriefing occurs. Additional resources, such as literature, case studies, documents, can also be made available, as appropriate. Monthly reviews with the Superintendent to review accomplishments, barriers and results will take place as scheduled.

2) Leadership Development with Demonstration of Increasing Maturity in Four Areas with Goals as:

a) Increased Personal Accountability for Identifying and Solving Problems/Completion December 16, 2016

Goal: Through personal coaching, interpersonal interactions and team dynamics demonstrate completion of consistent modeling of problem identification, ownership, accountability, and problem solving through honest/difficult conversations, enhanced perspectives of current state and critical stakeholders' gemba, passion and action for attaining zero-defect, personal reflection, acceptance of challenges and effort toward authentic accomplishment, and leadership praxis.

b) Create Positive, Non-Threatening Relationships with Employees-Stakeholders/ Completion December 16, 2016

Goal: Through personal coaching, interpersonal interactions and team dynamics demonstrate completion of consistent positive uses of participative power, freedom of expression, peer support, trust building, effective communication, acceptance of failure and appropriate interventions.

- c) Apply Servant Leadership Principles and Behaviors/Completion December 16, 2016

Goal: Through personal coaching, interpersonal interactions and team dynamics demonstrate completion of consistent positive applications of servant leadership through shared recognition/celebration of others' contributions, through humility absent demonstrations of power, through empathic responses and respect for people.

- d) Impress Subordinates, Peers and Supervisors with Meaningful Results/Completion December 16, 2016

Goal: Through personal coaching, interpersonal interactions and team dynamics demonstrate completion of consistent engagement in deliberate work absent intimidation by busy-ness, elimination of power positioning with intentional actions, work using continuous improvement mental models to completion, spend time fixing defects and attacking errors, and produce improvements and deliverables based on critical stakeholder input.

Strategies, Tasks, Activities:

For all goals listed above, a calendar of coaching, team-based and individual activities has been developed. Coaching work consists of personal briefings and debriefings, team-based work consists of Lean Task Forces planning activities, meetings and support functions. In addition, individual activities may include preparing, arranging, researching, reflecting and updating thinking, actions and documents. All goals include intense consultative interactions around preparing and planning, deploying and debriefing. Monthly update and review meetings will be held with the Superintendent to ascertain progress.

Measurable Evidence:

For all goals listed above, one or more A3s will be developed, updated and vetted with various data sets from coaching, monthly Superintendent reviews, Lean Teams, designated District stakeholders, pre-interim-post consultant interviews, observations and artifacts of learning and work, as well as timely, high-quality deliverables as specified in the goal statements above.

Support, Resources:

For all goals listed above, consulting and coaching onsite and with just-in-time phone services are provided so that appropriate planning and analyses, team work and leadership modeling, experimenting, observing and debriefing occurs. Additional resources, such as literature, case studies, documents, can also be made available, as appropriate. Monthly reviews with the Superintendent to review accomplishments, barriers and results will take place as scheduled.

I have read this performance improvement plan, discussed it with my supervisor, and understand the performance expectations it includes.

_____ Date _____

Chris Davis

_____ Date _____

Paul Soma

Exhibit R

Chris Davis retirement letter dated March 15, 2017, last day July 5, 2017



Traverse City Area Public Schools
Great Community, Great Schools

Christine M. Davis

Executive Director

Human Resources & Labor Relations

Kelly Walter

Executive Assistant

March 15, 2017

Paul Soma, Superintendent
Traverse City Area Public Schools
412 Webster Street
Traverse City, MI 49686

Dear Paul:

This is to inform you that I will be retiring from the Traverse City Area Public Schools. My last day will be July 5, 2017. I am thankful for the years I have had working with so many outstanding committed staff and Board members during my tenure as the Executive Director of Human Resources and Labor Relations.

I am looking forward to and am committed to assisting with a smooth transition in the months ahead.

Sincerely,

A handwritten signature in black ink that reads "Chris Davis". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Davis".

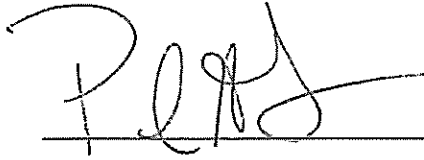
Chris Davis

Exhibit S

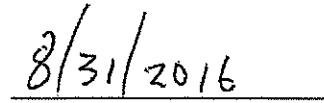
Paul Soma acceptance of Chris Davis' "resignation"

Chris Davis,

On behalf of Traverse City Area Public Schools Board of Education, I accept your resignation effective July 5, 2017.

A handwritten signature in black ink, appearing to read "P. Soma", written over a horizontal line.

Paul A. Soma, Superintendent

A handwritten date "8/31/2016" in black ink, written over a horizontal line.

Date

Exhibit T

Dr. Berck correspondence to Ms. Davis, dated April 19, 2017

Dr. Cindy J. Berck
Director
Human Resources



E-MAILED
4/20/17

April 19, 2017

Christine Davis
9088 Lawrence Drive
Traverse City, MI 49685

Dear Chris:

At its meeting on April 10, 2017, the Board of Education acknowledged your retirement as the full-time (1.0 FTE) Executive Director of Human Resources and Labor Relations effective July 1, 2017. Please let me know if you have any questions or need additional information regarding this matter.

Best wishes for a great rest of the school year!

Sincerely,

Dr. Cindy J. Berck, Director
Human Resources

/el

c: Paul Soma

Exhibit U

Berck Memo to Soma dated June 22, 2017

MEMORANDUM

TO: Paul Soma, Superintendent

FROM: Dr. Cindy J. Berck, Director
Human Resources

agb

DATE: June 22, 2017

SUBJECT: CHRIS DAVIS

This document outlines for payroll's purpose the manner in which Chris Davis's compensation and benefits will be handled in 2017/18:

- Chris Davis's last day of employment with the district will be 6/30/2017.
- Her retirement effective date is 7/1/17.
- She will receive compensation based on her 2016/17 rate for three additional days (recognizing her original resignation date was to be 7/5/17).
- She will be credited 20 additional vacation days on 6/30/17 (recognizing her original resignation date was to be 7/5/17).
- She will be paid out all accrued and unused vacation time on the 6/30/17 paycheck
- Beginning 8/1/17 through 12/31/17, she will receive compensation of \$38,000 for her work with the Homeschool Partnership (within her ½ maximum retirement earnings).
- Beginning 1/1/18 through 12/31/18, she will receive compensation of \$38,000 for her work with the Homeschool Partnership (within her ½ maximum retirement earnings).
- She will be granted contractual benefits (including personal business, sick time, medical insurance benefits) just as any other non-affiliated administrative employee when she begins the Homeschool Partnership position on 8/1/17.

OK

*Please designate the 20% retirement pay
be deposited to my existing 403-B
account. The remaining vacation and
other pay as outlined above be deposited
to my current TBA direct deposit.
Christina*