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THE COURT OF COMMON PLEAS
LEHIGH COUNTY, PENNSYLVANIA - CIVIL DIVISION

JASON MOOREHEAD
5360 Celia Drive, Allentown, PA 18106

Plaintiff

vs.

SCHOOL DISTRICT OF THE CITY OF ALLENTOWN;
31 S. Penn St., Allentown, PA 18102

BOARD OF SCHOOL DIRECTORS OF THE SCHOOL
DISTRICT OF THE CITY OF ALLENTOWN;
31 S. Penn St., Allentown, PA 18102

THOMAS PARKER;
503 S. Saginaw St., Suite 1200, Flint, Mich. 48502

NANCY WILT;
31 S. Penn St., Allentown, PA 18102

NICHOLAS MILLER;
31 S. Penn St., Allentown, PA 18102

SARA J. BRACE;
31 S. Penn St., Allentown, PA 18102

LISA A. CONOVER;
31 S. Penn St., Allentown, PA 18102

PHOEBE D. HARRIS;
31 S. Penn St., Allentown, PA 18102

CHERYL L. JOHNSON-WATTS;
31 S. Penn St., Allentown, PA 18102

CIVIL ACTION No.:
2021-C-2184

CAUSES OF ACTION:

- I. 1ST AMEND. FREE SPEECH & ASSEMBLY RETALIATION
- II. 1ST AMEND. POLITICAL AFFILIATION RETALIATION
- III. DECLARATION 24 PA. CS §11-1122 UNCONSTITUTIONAL
- IV. 14TH AMEND. DUE PROCESS VIOLATIONS
- V. 4TH, 5TH, & 14TH AMEND. VIOLATIONS
- VI. NAME CLEARING HEARING

JURY TRIAL DEMANDED

AUDREY MATHISON;
31 S. Penn St., Allentown, PA 18102

CHARLES F. THIEL;
31 S. Penn St., Allentown, PA 18102

LINDA VEGA;
31 S. Penn St., Allentown, PA 18102

ANTHONY PIDGEON;
31 S. Penn St., Allentown, PA 18102

MARILYN MARTINEZ;
31 S. Penn St., Allentown, PA 18102

JENNIFER RAMOS
31 S. Penn St., Allentown, PA 18102

JOHN D. STANFORD;
31 S. Penn St., Allentown, PA 18102

PATRICK PALMER;
31 S. Penn St., Allentown, PA 18102

LATARSHA BROWN;
31 S. Penn St., Allentown, PA 18102

JENNIFER LYNN ORTIZ
31 S. Penn St., Allentown, PA 18102

Defendants

NOTICE TO DEFEND - COMPLAINT

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE GO TO OR TELEPHONE THE OFFICES SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Bar Association of Lehigh County
1114 West Walnut Street
Allentown, PA 18102
Phone (610) 433-6204 <http://lehighbar.org/>

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Defendants

COMPLAINT

INTRODUCTION

1. Plaintiff Jason Moorehead was an employee for 18 years of defendant Allentown School District as a social studies teacher at Raub Middle School. He has a spotless record. He moved from Seattle to Allentown specifically to work with and help kids in a disadvantaged minority community. Many teachers are unable to cope with the pressure and challenges of this environment, but Mr. Moorehead thrived. He also led numerous extra-curricular activities, and had literally given his students the clothes off his own back if needed.

2. Mr. Moorehead is also a conservative Republican who supported Donald Trump

for President. This was not a fact he widely shared due to the extreme hostility in the public school system toward even mildly right-of-center viewpoints, including the administration and Board of the Allentown School District. Many members of the Allentown school board are left-wing ideologues who have a visceral hatred for right-of-center opinions and political affiliations. They are all fairly characterized as left wing and Democrats.

3. After the 2020 election Plaintiff went to the January 6, 2021 rally at the Washington Monument to hear President Trump speak.

4. Plaintiff listened to the speeches, got a hot dog, and then boarded a bus back to Allentown, PA. He was at all times more than 1 mile away from the Capitol Building and the infamous riot that took place there.

5. Yet, on the morning of January 7, 2021, he learned to his surprise that Defendants had suspended him indefinitely for participating in the riot at the Capitol Building—even though he was not there. He was shocked when defendant superintendent Thomas Parker blasted out an egregiously false press release on social media later on January 7, 2021, stating:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.

Exhibit 1. Although the press release did not name him, Mr. Moorehead was readily identifiable as the referenced teacher and was in fact so identified by the public. The suspension and press release were all plainly done with intent to terminate.

6. Plaintiff was given no warning or notice before the suspension or the press release. Defendants never even bothered to ask him if he was anywhere near the Capitol Building before they defamed him and unjustly suspended him for a false and defamatory reason.

7. At a January 8, 2021 meeting, Plaintiff informed Defendants he had been nowhere

near the Capitol Building and that what they were saying was false. Despite this, Defendants, due to ideological hatred for Mr. Moorehead, refused to issue any correction or retraction and refused to unsuspend him—to this day the defamation is uncorrected. As a result the community and nation were poisoned against him and believed that he had attacked the Capitol Building on January 6, 2021.

8. Defendants kept him suspended for the next 6 months while desperately trying to come up with some sort of justification for their outrageous conduct to terminate him. They even demanded all his devices trying to forensically search them to find a basis on which to fire him. There was nothing.

9. What Moorehead did not know was that Defendants were at all points acting as a secret arm of the FBI. When Plaintiff was interrogated on January 8, 2021, it was at the behest and direction of the FBI. He was never informed of this fact, and was never informed of his right to counsel and against self-incrimination. When the District seized his devices, it was to have the FBI search the devices. It is utterly outrageous that a governmental employer would so utterly and completely subvert their employee's constitutional rights and place him in criminal jeopardy.

10. Mr. Moorehead and his family's safety was imperiled by Defendants' defamation, and he received terrifying harassment, including a vicious death threat and a voicemail that someone was going to come to his family's house to "educate him."

11. As his baseless suspension continued, the defendant Board and its members, motivated by ideological hatred for Mr. Moorehead, colluded to further attack and knowingly defame him. Defendants Lisa Conover and Phoebe Harris worked with a community group on which Conover also sat on the board (and which is an official ASD partner) to defame Mr. Moorehead at February 11, 2021 board meeting as an insurrectionist, terrorist, and a racially

biased teacher. This was an utterly outrageous action taken by the Board to retaliate against Moorehead.

12. In July 2021, after six months of baseless suspension, Defendants privately admitted to him in a letter that they knew he had not rioted or attacked the Capitol Building. They then said they would reinstate him, but conditioned his reinstatement on Mr. Moorehead taking cultural competency courses regarding African Americans and Hispanics. This requirement was baseless and never explained.

13. Reinstatement, however, was impossible. Defendants had not only betrayed Mr. Moorehead and violated his most basic constitutional rights, but they created an overtly hostile and unsafe work environment which made his return impossible. Defendants also maliciously refused to publicly correct or retract their defamatory statement which they admitted was not true.

14. Defendants themselves later admitted that the false accusation that he attacked the Capitol Building had poisoned the school district against him—a falsehood Defendants had spread and refused to correct; the reinstatement was a sham, a tactic meant to try to force Plaintiff to resign. The District was clearly hoping to force Moorehead to resign so they could claim he voluntarily left.

15. Mr. Moorehead explained to Defendants that they had made his return impossible, especially the egregious failure to correct or retract the false accusation that he had attacked the Capitol Building, and that he would not take cultural competency courses not required of any other teacher as if he had done something wrong.

16. Mr. Moorehead refused to resign as he had done nothing wrong. Moorehead instead implored Defendants to do the right thing and find an amicable solution that allowed the

parties to part ways since Defendants had irrevocably broken the employment relationship.

17. Defendants, however, were not interested in publicly retracting their egregious defamation of Mr. Moorehead or resolving the situation amicably, because they view Mr. Moorehead as a political opponent. Instead, they, in bad faith, initiated termination proceedings against him for the pretextual reason that he allegedly refused to show up to work. Defendants ignored that a return to work was impossible because they had made it unsafe, manifestly hostile, and they had betrayed Plaintiff and broken the employment relationship.

18. Defendants then engaged in a six-month long dismissal process, which was utterly biased and predetermined. This process wholly ignored the vicious and illegal attacks by Defendants which made it impossible for Mr. Moorehead to return to ASD.

19. Mr. Moorehead was finally terminated at the July 28, 2022 Board Meeting in a 9-0 vote. Mr. Moorehead addressed the Board at the meeting and called them out for their shameful behavior, noting that they had spread lies about him, refused to correct the defamation, poisoned the community against him, made it unsafe to return, and had destroyed his life.

20. Defendants' actions unambiguously violated Plaintiff's First, Fourth, Fifth, and Fourteenth Amendment rights, and the Collective Bargaining Agreement.

21. Needless to say, had Mr. Moorehead been a black or Hispanic teacher who attended a BLM rally at which violence occurred over 1 mile away, and espoused left-wing sentiments Defendants agreed with, none of this would have happened.

BACKGROUND

22. Plaintiff Jason Moorehead taught at Allentown School District for 18 years as a social studies teacher at Raub Middle School.

23. He is originally from Seattle, but moved to Allentown to become a public school teacher.

24. Allentown is majority Hispanic and black and is a disadvantaged community. Teaching in the school system there has challenges and the turnover rate for teachers is high.

25. Mr. Moorehead, however, thrived in that environment and has a spotless record. He always served Allentown with pride and distinction.

26. Mr. Moorehead is also a conservative republican and supported Donald Trump. This was not a fact he advertised because the public school system, and especially Allentown, is overwhelmingly comprised of liberal Democrats who have demonstrated hostility for Republicans, conservatives, and supporters of Donald Trump.

27. This goes especially for the administration and Board of defendant Allentown School District.

Defendants Suspend Plaintiff Jason Moorehead without Notice with Intent to Terminate and Publicly Defame Him

28. Following the 2020 general election, and claims of voting improprieties, Plaintiff traveled to Washington, D.C. to listen to the speeches at the rally at the Washington Monument by President Donald Trump and other speakers.

29. After listening to the speeches, he got a hot dog from a street vendor near the Monument, and then boarded a bus back home to Allentown.

30. At all points he was over 1 mile away from the Capitol Building.

31. The morning of January 7, 2021, Plaintiff was called by defendant Anthony Pidgeon without notice or warning and told not to come to work “because of yesterday.” He did not know why. Plaintiff then received an email from Pidgeon at 11:47 am telling him that this was based upon “serious concerns about your involvement in the civil unrest that occurred at the United States Capitol Building” and that they were investigating his involvement. See Exhibit 2. No one asked him if he had been at the Capitol Building, and Plaintiff figured he would explain that he was not there at a meeting he had been told was occurring on January 8, 2021.

32. Later on January 7, 2021, without ever asking him about what happened, Moorehead was stunned when defendant superintendent Thomas Parker sent out a defamatory and false press release on social media claiming:

January 7, 2021

Dear Allentown Families, Staff & Community:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.

We understand that many members of our community are upset by the image. At the same time, the district has an obligation to respect the First Amendment rights of our staff and students.

Because of the emotion and controversy stirred by the events of the January 6, 2021, the teacher has been temporarily relieved of his teaching duties until the School District can complete a formal investigation of his involvement.

Exhibit 1 - Defamatory Parker/ ASD Press Release.

33. The Spanish version of the press release stated that he had “participated” in the protest at the Capitol Building. Id.

34. The false facts in this statement were that (1) Moorehead was at the US Capitol Building on January 6, 2021, and (2) he was involved in and participated in the protest at the Capitol Building.

35. Parker and the other Defendants blasted this press release out on multiple District Facebook accounts and Twitter to millions of people on social media.

36. At no point did they consult Plaintiff or ask him if the accusations made in the press release were accurate and truthful. It was plain that the suspension was done with intent to terminate.

37. Moorehead was nowhere close to the Capitol Building and had not participated in the violence there; he was at all times peaceful and law abiding.

38. Although not mentioned specifically by name, the Press Release was in fact about Jason Moorehead. Mr. Moorehead was easily identifiable as the teacher by the readers of the release, and many social media users in fact identified him on the School District's social media pages in the comment sections, and in posts of their own. See Exhibit 55 - Raub Middle School Facebook Posts. There was also no other teacher in the Allentown School District who had attended the rally.

39. Defendants knew before and after the press release was published that the public was identifying Jason Moorehead as the subject of the press release.

40. As a result of the press release, Mr. Moorehead was publicly and falsely identified as a participant in the Capitol Building riot by his own employer. The public in fact believed the false statements about Jason Moorehead which was and continues to be extremely injurious to his reputation and career.

41. The Collective Bargaining Agreement to which Plaintiff was a party provides in Article 10 that “Any criticism by an administrator or Board Member of a Member of the Bargaining Unit shall be made in confidence and not in the presence of students, parents, or at public gatherings.” Exhibit 21 - May 4 & 25 Emails, with Collective Bargaining Agreement, Article 10, Section F.

42. Defendants knew about this provision in the CBA; it is a basic protection provided to teachers which Defendants knew they should not violate.

43. The false and extremely public accusation that Moorehead had been present at and involved in the Capitol Building riot was a betrayal of Mr. Moorehead which broke the employment relationship.

44. Defendants so wantonly violated this basic protection out of animus for Mr. Moorehead’s political viewpoints, ideology, and political affiliations. Had a liberal or Democratic employee been at issue Defendants would not have rushed to push out public criticism of that employee, nor would they have pushed out a false accusation and suspended the employee without even consulting with the employee.

Defendants’ Defamation of Plaintiff Goes National; Defendants Held a Meeting where Plaintiff Informed them they Falsely Accused Him, after Which Defendants Again Publicly Accused him of Rioting at the Capitol Building

45. As noted, on January 7, 2021, Plaintiff was notified that a meeting was to take place on January 8, 2021, at 1 pm with the School District. What Mr. Moorehead did not know was that beginning on the morning of January 7, 2021, the District was secretly participating in an FBI criminal investigation of Mr. Moorehead.

46. When Mr. Moorehead woke up on the morning of January 8, 2021, he learned that the Allentown Morning Call, the major paper for Allentown, had published a story based on the

press release—with the paper’s own additions—stating that he had attacked the Capitol Building. See Exhibit 4 - Jan. 8, 2021 Morning Call Article. Although not specifically named, he was in fact widely identified as the referenced teacher.

47. Plaintiff was reeling and could not believe that his life and career were being destroyed over a lie that Defendants had never even bothered to ask him about.

48. The Morning Call article was blasted out all over national media—including the New York Post, Politico, and many many other outlets—which repeated the District’s assertion that Plaintiff had been suspended for being at the Capitol Building and participating in the violent riot:

Pennsylvania teacher suspended, others lose jobs over Capitol riot

A Pennsylvania teacher was suspended this week *after taking part In Wednesday's riot* at the U.S. Capitol, pending an investigation, the Allentown School District said, according to a report.

The unnamed educator was among a number of people who have reportedly been fired or asked to resign from jobs *after being identified as a Capitol rioter, The Morning Call in Allentown reported.*

“Pennsylvania teacher suspended, others lose jobs over Capitol riot,” FoxNews.com (January 8, 2021), <https://www.foxnews.com/us/pennsylvania-teacher-suspended-others-lose-jobs-over-capitol-riot> (emphases added).

49. Before the 1:00 pm meeting Moorehead was sent a Garrity Notice by the District Solicitor. See Exhibit 3 - Garrity Notice.

50. The purpose of the Garrity Notice is to warn an employee that he must answer narrow questions as part of a disciplinary proceeding related to his official duties, and inform him that his statements cannot be used against him in a criminal proceeding. However, Moorehead was never informed that he was already under criminal investigation, nor did he have any idea

that he was actually being interviewed by the FBI. Clearly, the Garrity protections were illusory. The fact that the District gave a Garrity warning while acting on behalf of the FBI during a secret criminal investigation completely obviates the purported protections provided by a Garrity notice

51. When he appeared via Zoom for the meeting at January 8, 2021, the District Solicitor was present as well as defendant Tony Pidgeon. They did not disclose that they were asking questions on behalf of the FBI, nor was he told of his right against self-incrimination nor of his right to counsel.

52. Plaintiff explained to Defendants that he was not at the Capitol Building riot and was at all points over 1 mile away from the Capitol Building on January 6, 2021.

53. Defendants appeared completely unaffected by his assertion that he was nowhere near the Capitol Building. The impression the questioning gave him—asking who was on his bus and if he knew names—was that it had been decided he was at the riot and that they wanted to know if he had “accomplices.”

54. The questions were not narrow, nor were they related to his official duties, as required by Garrity.

55. Then, after the meeting, at around 5 or 6 pm, the Morning Call story was updated. The updated story now contained comments from Defendants, stating:

“The district is taking the matter seriously and has started the process of investigating the extent of the teacher’s involvement [in the Capitol Building riot], district solicitor John E. Freund III said.”

Exhibit 4.

56. As noted above, although Moorehead was not identified specifically by name in the article, he was readily identifiable as the reference teacher and was in fact identified as such by members of the public.

57. This statement was false and told the reader both directly and through implication that Moorehead was at the Capitol Building and had been involved in the Capitol Building riot, and that all that remained was to determine the extent of his involvement in the riot. Defendants, however, knew from the 1 pm meeting that the extent of Moorehead's involvement was that he was nowhere near the Capitol Building and was never part of any violence.

58. Defendants, by and through the District Solicitor, were also quoted as saying:

"The district has to balance the employee's right to free speech and association, against teachers' duty not to participate in or advocate un-American or subversive doctrines," he said, referencing the Pennsylvania public school code.

Exhibit 4.

59. Section 1122 of the Pennsylvania School Code lists the exclusive grounds on which a tenured teacher can have his contract terminated, one of which is advocating and participating in un-American or subversive doctrines.

60. By publicly claiming that Moorehead participated in or advocated un-American and/or subversive doctrines, Defendants again told the public that Moorehead had participated in a violent protest at the Capitol Building, which is false and defamatory.

61. The reference by the Solicitor to the section of the School Code which permits termination of a teacher further demonstrates that the suspension was done with intent to terminate, if that was not already obvious from the defamatory statement put out by Parker on January 7, 2021.

62. This given justification for Defendants' discipline against Moorehead—advocation and participation in un-American and subversive doctrines—is also unconstitutional free speech retaliation.

63. Since Brandenburg v. Ohio, Tinker v. Des Moines, Texas v. Johnson, and U.S. v. Eichman, laws prohibiting advocacy of so-called un-American and subversive doctrines have been struck down as unconstitutionally prohibiting protected speech and related rights.

64. Such laws are only valid to the extent they are narrowly tailored to forbid unprotected speech, such as imminent incitement to illegal activity, and are otherwise void for overbreadth and vagueness.

65. As noted *infra*, Plaintiff asks that section 1122 of the Pennsylvania school code be declared unconstitutional for (1) permitting viewpoint discrimination, and (2) for being overbroad and vague, all in violation of the United States Constitutions.

66. In other words, Defendants' statements to the Morning Call that Moorehead had been suspended for participating in and advocating un-American or subversive doctrines by being present at and involved in the Capitol Building riot were not only factually false, but admitted suspending Plaintiff for a blatantly unconstitutional reason.

Defendants Refuse to Correct the Defamation of Plaintiff, Causing Permanent Harm to His Reputation and Career, and Endangering the Safety of Him and His Family

67. Despite being notified on January 8, 2021, that Plaintiff was at all points over 1 mile away from the Capitol Building on January 6, 2021, and not involved in any violence, Defendants never publicly corrected the false and defamatory statements they made about Jason Moorehead. Defendants could have easily ascertained Moorehead's whereabouts on January 6 or 7, but deliberately chose not to. These public statements were also in violation of the CBA prohibition on public criticism of teachers.

68. As a result of Defendants' failure to correct their defamation of Plaintiff, the school, students, parents, community, and nation believed that Plaintiff had rioted at the Capitol Building on January 6, 2021, and was a criminal.

69. Plaintiff demanded over and over that Defendants correct the defamation, but Defendants refused to do so:

Every day your client keeps the unambiguously defamatory press release on its website and social media accounts—and refuses to issue a correction—is more proof of malice. You have never provided any facts to establish that Mr. Moorehead was anywhere near the Capitol Building—and you never bothered to talk to him before blasting him in the press. Furthermore, after talking to him on Jan. 8, you never corrected the false press release. You have also never even explained why it is not being corrected.

Exhibit 10, at p.1; see generally Exhibits 5-10.

70. Defendants' public defamation of Plaintiff, their refusal to correct the defamatory statements, their refusal to immediately unsuspend him, their further defamation of Plaintiff even after his denials, and their violation of the CBA prohibition on public criticism, made it abundantly clear that he could not return to his position and almost certainly his career in education.

71. To attempt to correct the record and mitigate the harm Defendants were causing, Plaintiff appeared on television several times to try to correct the narrative, but many believed that he was lying and that Defendants' false public statements about him were truthful.

72. Mr. Moorehead also received incredibly disturbing and threatening voicemails—several of which can only be described as psychotic—which violently threatened to come to his house to “educate him” and which made him, his wife, and their two young children fear for their safety. The callers' vitriol included the following accusations, threats, and insults:

- Accusing him of “lying” that he had not been at the riot
- Claiming he was “participating in a coup,”
- Stating that he should be “teaching those kids to be good kids not racist white supremacists,”
- accusing him of being a “white supremacist,”
- calling him “Racist piece of shit,”
- threatening him “I come down your house, I find you, I educate you, you dumb piece of shit,”
- calling him an “insurrectionist,”
- stating he “attacked the capitol,”
- stating “you got suspended because Allentown School District needs to do an investigation to fully understand your participation on [sic] the insurrection on January 6, you stupid motherfucker, Jason, you’re dumb, you should get your teaching licenses revoked, you should be put in jail, you are a piece of shit,”

73. In addition to the voicemails he was sent an explicit death threat on January 23,

2021:

Subject: You fucking scum
You scum sucking cunt.....The PA Resistance has stated that moorehead will be sentenced to execution and found guilty soon.
He is a lying insurrectionist and they have said “he’s a dead man!!!”

Exhibit 6.

74. Mr. Moorehead filed a report with the State Police to protect himself and his family. This was also necessary because Mr. Moorehead was doxxed and his personal information posted online.

75. He added security cameras, covered his windows, and isolated his family to protect them from those seeking to harm them.

**Defendants, including Defendant Board Members Lisa Conover and Phoebe Harris,
Collude with Leftwing Community Organizations to Defame and Attack Plaintiff at a
February 11, 2021 Board Meeting**

76. Despite knowing that Plaintiff had not been at the Capitol Building Defendants refused to retract the defamation and reinstate him—and instead further publicly attacked him because of their left-wing politics and ideological hatred for Republicans and conservatives.

77. After Mr. Moorehead publicly stated to news programs that Defendants' assertion he was at the Capitol Building on January 6, 2021, was false—and members of the community spoke out in support of him at a late January 2021 Board Meeting—the defendant Board Members, especially Lisa Conover and Phoebe Harris, colluded to attack and retaliate against him because of their hatred for Plaintiff's political opinions and affiliations.

78. At this time in January and February 2021, defendant Conover was on the board of the community organization Promise Neighborhoods, which is an official partner of the defendant school district.

79. Conover and Promise Neighborhoods started a Change.org petition on February 4, 2021, to the Allentown School Board, under the hashtag #protectourchildren, about Plaintiff:

We the parents and neighbors are signing to oppose anyone that attended the storming of the capital in Washington. The actions of the rioters have left our students and families feeling unprotected in their classroom and we wonder how can we disrupt the school to prison pipeline when those that are paid to protect, educate and heal us support white supremacy.

Exhibit 16 - Attacks on Moorehead by Promise Neighborhoods. This appears to be the only Change.Org petition that Promise Neighborhoods had ever started.

80. Pas Simpson, an acquaintance of Conover and Harris, is a leader of Promise Neighborhoods and was intimately involved in creating the petition, advertising it, and then attacking Plaintiff at the February 11, 2021 board hearing. Id.

81. Promise Neighborhoods shared the Change.Org petition on February 4, 2021, on Facebook and stated “Please sign and share this petition as we prepare for the February 11th School Board Meeting.” Id.

82. The comments to the petition identify Mr. Moorehead by name, are vile, and demonstrate that the readers believed he had “stormed” the Capitol Building, such as this defamatory comment:

White supremacists and terrorists do not belong in our country, let alone teaching children. The teacher from ASD who stormed the Capitol on January 6th in attempt to execute members of Congress and overthrow our government deserves to be fired and forever remembered as a traitor to our country.

Id.

83. This petition was specifically started by Conover and Promise Neighborhoods to whip up the community and local activists in advance of a February 11, 2021 board meeting, so that that they would defame and attack Plaintiff at the board meeting using the defamatory lies Defendants had been spreading about Plaintiff.

84. Another left-wing community group named POWER Lehigh Valley closely connected to Promise Neighborhoods, Conover, and Harris shared the Change.Org petition on Facebook and stated, in part, “Jason Moorehead, the ASD teacher who participated in the riot at the Capitol” should not be reinstated. Exhibit 16.

85. Defendants were aware of the Promise Neighborhoods petition, and the related social media posts by Promise Neighborhoods and POWER Lehigh Valley.

86. On or around February 5, 2021, Promise Neighborhoods started a Facebook event for the Allentown School Board meeting on February 11, stating “Join us as we fight to provide a safe learning environment for our children. Sign the petition. Have your voice heard.” This post was an attack on Jason Moorehead, and outrageously claimed that he could not provide a safe learning environment for children. Exhibit 16.

87. Defendant board member Phoebe Harris shared the event created by Promise Neighborhoods on Facebook on February 5, 2021, demonstrating that all Defendants were aware of this campaign to have left-wing community activists attack Plaintiff at the board hearing using the defamatory lie that Moorehead had rioted at the Capitol Building. Id.

88. All Defendants were aware of this social media campaign targeting and retaliating against Jason Moorehead in advance of the February 11 board hearing.

89. At the February 11, 2021 board meeting, left-wing activists—at the instigation of Defendants, and in coordination with them—used lies Defendants had published about Moorehead to outrageously and falsely attacked Jason Moorehead. See ASD Feb. 11, 2021 Board Hearing, <https://www.youtube.com/watch?v=02bMYoXUq-s>.

90. Defendant Conover chaired during the comment section of the February 11, 2021 meeting, so that she could control the public comment period at which she had arranged for community activists to defamatorily attack Plaintiff.

91. **First**, Pas Simpson, a friend of Lisa Conover and Phoebe Harris, as well as a leader of Promise Neighborhoods, stated that his group had started a petition and gathered signatures showing that the community did not like Plaintiff and that educators should not be engaging in “terrorism” and “white supremacy.” Simpson, also stated that he wanted to give the comments from the Petition to the Board, which as noted above are vile and defamatory.

92. It should be noted that this is pure theater as Defendants had colluded with Simpson and Promise Neighborhoods to start the petition and have Simpson and Promise Neighborhoods attack Plaintiff at the board hearing—based on Defendants’ lie that Moorehead had stormed the Capitol Building. All the defamatory comments in the petition, the comments thereto, and at the meeting were caused by and are the responsibility of Defendants.

93. **Second**, other commenters accused Moorehead of being present at an “insurrection.” A woman named Enid Santiago stated “Make sure that man never, ever teaches BIPOC children in the school district of Allentown” and that Moorehead “took part in the attempt to overthrow our government, in our election, our democracy.” She further falsely and baselessly accused Moorehead of harassing and treating students differently because of race.

94. **Third**, a woman stated Moorehead reminded her of a “wolf in sheep’s clothing. We have to take a stand, because if we don’t take a stand, we’re gonna allow this wolf out of the jungle and he will come and take our children.”

95. **Fourth**, another man accused Moorehead of attending an insurrection and that Moorehead was engaging in misconduct in the classroom, which could send a child “spiraling to prison or death.”

96. All Defendants, especially the presiding board member Lisa Conover, knew that (1) Moorehead had been nowhere near the Capitol Building and was not part of any violence, and (2) that in 17 years there had never been a single allegation of bias or misconduct against Plaintiff. Despite this, Defendants never corrected their previous defamation or cautioned the community. They did not do so because they had pre-planned these attacks on Plaintiff and maliciously wanted their lies about him spread even further.

97. At this point, the District Solicitor stepped in to caution the participants that not all facts about Plaintiff's "involvement" had been established. It should be noted that Defendants could have used this opportunity to publicly correct the record and inform the community that the District's Press Release, and the attacks on Moorehead, were false. They did not do this.

98. Defendant Conover was not happy with the Solicitor's interruption given that she, Defendants, and Promise Neighborhoods had spent the last two weeks organizing the community to attack Plaintiff at this board meeting.

99. She angrily asserted that she did not care about the Solicitor's advice, and that she was going to let the community speak their mind. Note that Conover herself had specifically arranged for the commenters to attack Moorehead based on a false accusation Conover knew was false.

100. Defendant Harris—who had advertised on Facebook leading up to the meeting to encourage people to speak against Moorehead—then stepped in to support the attacks on Moorehead, furious that people had supported Moorehead at a prior board hearing: "Let's remember, 2 weeks ago, everyone got to speak, and so these parents want to speak now too, so let's give them the platform and not stifle what they want to say because we didn't do that 2 weeks ago." This makes it abundantly clear that due to political animus Defendants were upset at the truthful support shown for Plaintiff and had organized this meeting to perpetuate their false narrative and solidify the community's belief that he was at the Capitol Building, involved in the riot, and had engaged in un-American and subversive behavior.

101. The community activists who were being used by Defendants to attack Moorehead heard the message from Conover and Harris loud and clear and further defamed

Plaintiff at the meeting. A woman named Robyn Weaver stated: “Jason Moorehead has identified himself as a White Supremacist by his participation in the Capitol insurrection. And it is you know, your duty as educators in our community and as leaders in our community to hold him accountable and protect our children. We understand that traumatization occurs through racism and through white supremacy especially students of color experienced this on a daily basis. And, it’s impossible to learn when you have that fight or flight response occurring constantly being around a person who you know through his participation in an insurrection does not believe that you are a full human, deserving of rights and love.”

102. Another community activist then attacked the Solicitor and demanded that he listen to the defamatory statements being made about Moorehead because people had spoken in support of Moorehead at the last board meeting. The activist then stated that “Jason Moorehead attended a failed coup where two police officers were murdered. He was among local, homegrown terrorists who travelled to the capital to intimidate, harm, and disrupt the national election. He teaches BIPOC children, and how the power to influence them, and has general power over them in this classroom. How many microaggressions has he gotten off his chest to our black and brown children?” He went on to say: “Your teacher is a walking liability.”

103. Further comments from another activist demanded that Plaintiff be fired because he attended a rally she disagreed with, and that children are unsafe around Moorehead in the classroom, and that Moorehead is guilty by association with politicians she disagrees with.

104. A man named Will Strouse then commented. He claimed that Plaintiff had attended an insurrection, with proud boys, white supremacists and criminal domestic terrorists. Mr. Strouse claimed that Plaintiff posted support of those groups. Mr. Strouse also claimed that

Plaintiff lied, boldly and condescendingly on national television about his attendance at the riot. All of this was demonstrably false.

105. At this point the District Solicitor stepped in and said that he was “concerned about defamation.” Defendants, of course, knew that what was being said about Moorehead was false. Again, it should be noted that Defendants could have taken this opportunity to retract the false accusation that Moorehead rioted or had been at the Capitol Building, but did not do so.

106. Defendant Conover, demonstrating wanton and intentional disregard for Plaintiff’s rights and the truth, then stated to the Solicitor “Nobody’s asking for counsel right now.” Again, Conover did not want the ambush she set up being interrupted with cautionary instructions from lawyers warning against outrageously defaming an innocent employee.

107. Strouse then continued, claiming that Plaintiff “spouted these false narratives [on CNN], and showed no remorse while trying to cover his ass.” Strouse stated that Moorehead “needs to be brought to justice.”

108. The Solicitor then interposed again and stated “There is a line here, Ms. Conover, between legitimate expressions about legitimate concern about the impression that has been made in terms of the effectiveness of this person as a teacher. There’s a difference between that and defamatory statements about his character, and we shouldn’t be tolerating that.”

109. Defendant Conover stated again, unhappy that the Solicitor was raining on her defamatory parade, that she was not asking for counsel, and that she is “okay with that, whatever comes out of it, let it come out.”

110. Because of political animus for Mr. Moorehead, no other defendant board member before, during, or after the board meeting intervened to stop what was happening despite knowing that (1) Defendants had defamed Moorehead and that he had not attacked the

Capitol Building, and (2) that Conover and Harris had arranged for these defamatory comments to be made about Moorehead at the board meeting.

111. This type of intentionally illegal conduct from governmental officials is outrageous and corrupt. Conover, and all Defendants, are using their governmental positions to deliberately defame an employee they disagree with and destroy his teaching position and career.

112. Additional speakers then denounced the Solicitor for allegedly coming to the defense of a “white supremacist,” that Moorehead was guilty of treason, that he tried to overthrow the government, and that Moorehead should be arrested and charged with a felony.

113. Conover then announced that she was going to call on a student. She then recalled her acquaintance Pas Simpson of Promise Neighborhoods;¹ the student was apparently on Pas Simpson’s computer. This shows foreknowledge and coordination on the part of Conover with Simpson and Promise Neighborhood. Pas Simpson can be heard coaching the student in the background.

114. The student in Simpson’s house demanded that Moorehead be fired for attending a “protest of violence.” After the student had demanded that Moorehead be fired, as the student went to continue speaking, Conover brusquely interrupted and said “That’s it. Thank you very much.”

115. Clearly, Conover knew beforehand that this student was going to speak, and from which household. Then, when the student had stated what Conover wanted, Conover decided she was done, cut her off, and moved to the next speaker.

¹ Note that Conover bizarrely feigned as if she did not know how to pronounce Simpson’s first name, despite knowing him well and serving on the board of Promise Neighborhood, an organization with Simpson helps run.

116. Conover, Harris, Simpson, Promise Neighborhoods, and all Defendants did not even try to hide their orchestration of these false and defamatory attacks on Moorehead.

117. Additional speakers then called for the Solicitor to be fired, stated that Moorehead was hearing a hood under his educator's hat, and called on Moorehead to be prosecuted as an accomplice in the Capitol Building riot.

118. All Defendants participated, supervised, ratified, and acquiesced in the retaliatory and defamatory attacks on Plaintiff leading up to the February 11, 2021 board meeting, and at the board meeting itself.

Defendants Request Plaintiff's Electronic Devices, Desperate to find Some Evidence of Wrongdoing; Defendants Hid from Plaintiff that the FBI was Searching his Devices

119. Defendants knew that their false statement and given reason for suspending Plaintiff was blatantly false. However, given their ideological hatred for Plaintiff, they refused to publicly correct the defamation—indeed, they amplified it.

120. Plaintiff's counsel wrote to the District Solicitor and made it clear that press release had to be withdrawn and corrected immediately, and that serious due process violations were occurring. See Exhibits 5-10.

121. To attempt to find some sort of cover for their ridiculous attacks on Plaintiff, they demanded that Plaintiff turn over his electronic devices to be searched in late January 2021. See Exhibits 11-12.

122. Mr. Moorehead's counsel was told that if he turned over the devices, and there was no proof he was at the Capitol Building, the defamatory statement would be corrected and he would be reinstated (although the possibility and ability of reinstatement was extremely dubious).
Exhibit 20.

123. Mr. Moorehead's counsel was also falsely assured by Defendants' solicitor there was no criminal aspect to this request. Exhibit 13.

124. What Moorehead and his counsel did not know, as described *infra*, was that the FBI was behind this request and was the entity searching his devices. This was an outrageous breach of his constitutional rights. Exhibits 17-18.

125. The search of his devices found nothing.

126. Plaintiff demanded that Defendants unsuspend him and correct the record as there was no factual or legal basis to suspend him, plainly with the intent to terminate him, and find an amicable way to separate since the employment relationship had obviously been destroyed. Exhibit 18 - April 1, 2021 Letter from Moorehead's Counsel.

127. On April 9, 2021, Defendants then served him a putative Loudermill notice claiming that a hearing would concern his posting on social media on January 6, 2021, and whether he had requested a personal day using the correct procedure. Notably, the notice did not claim he was at the Capitol Building, which was the false and very public reason given for his suspension. Also notable was that Defendants never corrected or retracted their public defamation of him on January 7 and 8, 2021, nor their defamatory conduct at the February 11, 2021 board meeting. Exhibit 19.

128. The content of the social media posts that Mr. Moorehead made on January 6, 2021, were squarely protected by the First Amendment and in no way warranted discipline or termination. See Exhibit 56. Indeed, as discussed *infra*, Defendants themselves admitted this basic fact when they purported to reinstate him on July 16, 2021.

129. The 3-month delay between the initial unnoticed suspension and first Loudermill notice in April 2021 is inexcusable in this case and is itself a due process violation. The

government is not allowed to publicly defame an employee and suspend him indefinitely for a false reason, engage in months of a fake and unnecessarily drawn out investigation the result of which they already know, refuse to correct the false public statements, and refuse to provide him a Loudermill notice and opportunity to respond for 3 months. It makes a mockery of the due process requirements as laid out by the Supreme Court. See Barry v. Barchi, 443 U.S. 55, 66 (1979).

130. This delay was extremely prejudicial as the given public reason for his suspension was un-American and subversive activities for participating in a riot at the Capitol Building, which is absolutely false and to this day remains uncorrected.

131. Moreover, the delay was also prejudicial because by the time Defendants purported to reinstate Plaintiff, he had served six months of suspension, a grossly excessive penalty even assuming his social media posts were worthy of discipline. See Barry, 443 U.S. at 66 (stating that due process violation exists where employee immediately suspended without notice and defendant does not allow for prompt resolution of dispute, leading to full penalty being experienced by employee without due process: “Once suspension has been imposed, the [employee’s] interest in a speedy resolution of the controversy becomes paramount, it seems to us.”).

132. Indeed, even suspending Moorehead without notice or hearing was unconstitutional and violated due process. Where a suspension is done with intent to terminate, it is viewed as a *de facto* termination and constitutes a deprivation to which due process protections attach. See Dee v. Borough of Dunmore, 549 F.3d 225 (3d Cir. 2008); Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011); Gniotek v. City of Philadelphia, 808 F. 2d 241, 243-44 (3d Cir. 1986) (stating that suspensions with intent to terminate are *de facto*

dismissals and due process protections attach).

133. Only a strong government interest can justify the pre-hearing deprivation of a property right, usually related to public safety concerns, which are not implicated by this case. Even then the appropriate process must be provided immediately, which was also not done in this case; this is especially egregious because Defendants actually knew almost immediately the justification for the immediate suspension was baseless.

Defendants Refuse to Correct the Defamation while Holding a Fake Loudermill Hearing

134. In response to the April 9 Loudermill notice, Plaintiff's counsel objected to the shifting goal posts and the refusal to correct the defamation on April 13, 2021. Exhibit 20. The devices were clean and the defamatory statement was supposed to be corrected; now the District was trying to premise the discipline on entirely different reasons.

135. These new reasons were blatant pretext, and were not the reason given in the public announcement of his suspension. The reasons publicly given were that he had participated in the Capitol Building protest and was engaged in un-American and subversive conduct.

136. Post hoc rationalizations of discipline are viewed as pretext and evidence of illegal discrimination. American Freedom Defense v. Washington Metro., 901 F. 3d 356, 366 (D.C. Cir. 2018). Pretextual and insincere excuses to justify discrimination are to be disregarded. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146-48, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)

137. Plaintiff's counsel further stated "I've already made it clear Jason cannot return to Allentown because the District has made that an impossibility. No reasonable teacher in his position could return given the District's conduct." See Exhibit 20.

138. Plaintiff's counsel also stated "the same biased administrators and Board Members who attacked him so clearly in violation of his rights should in no way be allowed to

participate, govern, or control any process going forward” and “If a fair process is to occur, it starts with the correction of the defamatory statement.” Id.

139. It was also noted that the CBA prohibited public criticism of a tenured teacher such as Plaintiff, which Defendants blatantly violated, causing Plaintiff to lose all trust in his employer. Id.

140. When Defendants tried to move forward with a defective Loudermill hearing, Plaintiff again objected on May 4, 2021, for the same reason noted before. He again reiterated that “Mr. Moorehead cannot go back to ASD. The District’s Actions and inactions have made this impossible.” Exhibit 21.

141. Plaintiff and his counsel repeatedly attempted to have Defendants recognize that their outrageous conduct, and betrayal of Mr. Moorehead, had constructively terminated him and made it impossible and unsafe for him to return.

142. The District then held a so-called Loudermill hearing on May 5, 2021, without Mr. Moorehead present, focusing on the pretextual reasons for Moorehead’s discipline.

143. On May 24, 2021, counsel for Mr. Moorehead demanded a status update regarding the inexcusable delay as Mr. Moorehead remained suspended. Again, it was noted that “The fact of the matter is that the parties agree Mr. Moorehead cannot return to Allentown School District.” Exhibit 21.

**The Fake Reinstatement Letter is Sent and Privately Admits that Plaintiff was
Not at the Capitol Building Riot**

144. After over six months of being suspended for a false and defamatory reason, the District finally wrote a letter on July 16, 2021, admitting he had been nowhere near the Capitol Building:

After fully investigating your involvement in the events of January 6, 2021, in Washington D.C., the district has concluded that your presence at the January 6th gathering did not violate School Board policy 419 relating to teacher non-school activities.

Exhibit 22.

145. Notably, although Defendants now were privately admitting Plaintiff had not attacked the Capitol Building, they never publicly corrected or retracted the false statements on January 7, 8, and February 11, 2021, as Mr. Moorehead had been requesting for 6 months—and still have not done so as of the filing of this complaint.

146. The letter did admonish Plaintiff for his social media posts claiming that they were offensive. Note that this given reason is pretextual as explained above, and also violates the First Amendment. His out-of-school speech is protected by the First Amendment.

147. Nothing about these posts warranted suspending him for six months, and these posts were not the true reason he was suspended and disciplined. Basically, instead of doing the right thing, the district had kept him suspended for six months while they tried to figure out how to avoid liability and correcting the defamatory statements.

148. It should be noted that the fact that Defendants purported to reinstate him is an admission that nothing about his speech justified terminating the employment relationship *in their own view*, including any putative disruption.

149. The letter then nonsensically said Defendants would reinstate him if he took “cultural competence” classes on African American and Hispanic history.

150. This baseless condition on his reinstatement demonstrates the ideological and political motives for his discipline, the public attacks on him, and the refusal to correct the defamation and disinformation Defendants spread about him. It also indicates that the

reinstatement was a sham, since there is no way that Plaintiff would have ever agreed to this poison pill.

151. The topics of these classes have nothing to do with Moorehead's alleged disciplinary violations. In Defendants' minds, even though they had no legal basis to fire him, he is a racist conservative who must be reeducated. They also wanted an excuse to put this letter in his disciplinary file.

152. The letter also said that he was being removed from his position at Raub Middle School and his new position and location would be later determined. In essence, this purported reinstatement was not actually reinstating him as a teacher, but instead was an attempt by Defendants to pretend to reinstate him so they could claim they had not retaliated against him or failed to provide him due process.

153. This letter was a nonstarter. Plaintiff's counsel wrote to the district on July 30, 2021:

As we discussed on the phone, Mr. Moorehead is rejecting the District's proposal. The proposal does nothing to correct the false information that was disseminated about him. Furthermore, he was falsely labeled a racist, a bigot, and an "insurrectionist." He is not going to be forced to take diversity training classes as if he did something wrong. The truth is that the District has made it impossible for Mr. Moorehead to return to the school district. He would be returning to the most hostile working environment imaginable in the current political climate.

Exhibit 23.

154. Counsel's response concluded, "In sum, trying to reinstate him, after leaving him suspended for over half a year following destroying his reputation and ability to teach in the community, is not going to fix this." Id.

155. Defendant Pidgeon ignored this letter from Mr. Moorehead's counsel and again demanded on August 9, 2021, that Plaintiff return to work, falsely claiming that Plaintiff had never responded. Defendant Pidgeon exhibited a pattern of ignoring that Mr. Moorehead was represented by counsel, and made false claims that Moorehead had refused to respond to letters when in fact he had done so through counsel. These petty bureaucratic games by defendant Pidgeon to prejudice Moorehead's rights are further evidence of malice and animosity by Defendants toward Plaintiff.

156. Plaintiff himself then wrote to defendant Pidgeon on August 16, 2021, rejecting the District's absurd demands and attempt to gloss over what happened:

There is no way that I can return to the Allentown School District given the way the District has publicly vilified and defamed me, poisoned the community against me, put me and my family's safety in jeopardy, and never corrected the record.

I was a 17-year teacher with no discipline or complaints. Yet, on January 7, 2021, without even speaking with me, the District publicly and falsely claimed that I participated in the violent riots that took place at the US Capitol Building on January 6th, and suspended me indefinitely. The District told the media that the basis for my removal was that I had engaged in un-American and subversive conduct. This is flatly unconstitutional and factually false. I was nowhere near the Capitol Building and did nothing wrong.

I was given no notice or chance to defend myself, which is also unconstitutional. These attacks on myself also directly violated the Collective Bargaining Agreement which only allow teachers to be disciplined for just cause and prohibits the District from publicly criticizing teachers. Worse, the District has known since January 8th that I was never near the riots, yet they have deliberately remained silent and refused to correct the record.

As a result of the District's inexcusable conduct and omissions, I was verbally attacked at school board meetings and slandered mercilessly on social media. My private address and phone number was posted. ***I received death threats and other threatening phone calls. My wife and kids were scared senseless.*** We had to install security cameras and file police reports. This has turned my world upside down.

Because of the District, the community and school think that I participated in a dark moment in American history and they hate me for it. Google my name and look what pops up.

You now send me a letter which pretends as if the last 7 months did not happen. Your letter only states that I will be reinstated to a different school if I take sensitivity training- as if I did something wrong. I cannot state strongly enough that I reject what you and the District are trying to do.

You cannot pretend as if you did not illegally destroy my life and career.

....

Every relationship is built upon trust. You destroyed the trust I had with my students, parents, and the community. You have made it impossible for me to trust the District; how can I return to an employer who has defamed me, will not correct the record, and has no concern that it illegally violated my rights? You have created a hostile work environment.

Accountability matters. The District and Board need to publicly post an apology on the website and social media unequivocally correcting the record and clearing my name, and send the apology to the newspapers and news stations in Allentown. They also need to send an email to all students, parents, teachers, administrators, and staff doing the same. There also needs to be mandatory training for all staff and Board Members on free speech and due process so that this never happens again

Exhibit 25.

157. He could not return to the District. This had been explained for months, but the District ignored it. It would be the most hostile environment possible, not the least of which because Defendants were intent on never correcting the defamation. Defendants had broken the employment relationship beyond repair and constructively terminated him. Plaintiff also refused to take Stalinist reeducation classes, as if he did something wrong or racist.

158. Furthermore, they did not even specify what position he was being placed in, since the District knew it was impossible for him to be placed in Raub Middle School where he had taught for 17 years. In reality, there was nowhere in the District Plaintiff could be placed given the lies spread about him by Defendants due to a hostile and unsafe environment.

159. Defendants' tact was clear: Defendants were trying to avoid taking responsibility for the situation they created, they were ignoring that Moorehead cannot return to the District,

and they were trying to prejudice Plaintiff's rights by forcing him to take classes to signal he did something wrong.

**The District Acted as a Secret Arm of the FBI,
Violating Plaintiff's Constitutional Rights**

160. Unknown to Plaintiff at this time, the violations of his rights were much more severe than he realized.

161. Specifically, as of the morning of January 7, 2021, the District was secretly working with the FBI. At the January 8, 2021 meeting, although the District solicitor was asking the questions, the questions were in fact from the FBI.

162. Mr. Moorehead's own employer was acting as a secret arm of the FBI without informing him of his constitutional right against self-incrimination, by providing him a misleading Garrity notice, and by failing to inform him that he was being questioned as part of ongoing criminal investigation he did not know about. See Exhibit 3 - Garrity Notice. This is absolutely shocking.

163. As Defendants realized they had defamed Plaintiff, but did not want to correct it, they were desperately trying to find a way to justify their horrible attacks on Plaintiff.

164. Thus, from late January to March 2021, they demanded Plaintiff's electronic devices for inspection. Exhibit 11-15. Plaintiff was told that if they were clean, the District would clear his name. Exhibit 20.

165. In actuality, the District had only asked for the devices so the FBI could search them, trying to find something to incriminate Mr. Moorehead. Again, he was not informed of his 4th or 5th Amendment rights against self-incrimination, unreasonable search and seizure, or his right to counsel.

166. The testimony at the Board Hearing established that high-level District officials drafted, compiled, and kept a special, secret 299-page HR binder relating to an FBI inquiry to Mr. Moorehead, separate and apart from his regular HR file. Exhibit 43 - Day 1 Transcript, at p.167-172.

167. Although Plaintiff is entitled to examine his HR file, Defendants refused to produce this HR binder despite the fact that it is directly relevant to this matter and is not privileged because it contains communications with third parties.

168. Instead, all that was produced was a deficient and conclusory privilege log which vaguely asserted privilege over all 299 pages. Exhibit 44 - Privilege Log for Secret HR File.

169. The testimony also established that the FBI contacted Defendants the morning of January 7, 2021, and that Defendants started working with the FBI to criminally investigate Plaintiff the morning of January 7, 2021. Exhibit 49 - Day 2, at p.101-08.

**Defendants Move to Fire Plaintiff for a Pretextual Reason:
that He Did not Come to Work; Plaintiff Could Not Return to Such a Hostile Environment**

170. When Plaintiff would (and could) not return because Defendants had refused to correct the defamation of him, and his return was clearly impossible due to the hostile/unsafe environment, Defendants then stopped his pay on September 1, 2021, without warning.

171. On September 9, 2021, Plaintiff filed a writ of summons in Lehigh County Court of Common Pleas initiating this action, which was emailed to the District Solicitor and Pidgeon. Exhibit 26.

172. On September 14, 2021, defendant Pidgeon sent Plaintiff a letter purporting to be a Loudermill notice for his termination for failing to show up to work. Exhibit 27. Pidgeon did not send it to Moorehead's counsel and it was not seen for several days.

173. Pidgeon acknowledged that Moorehead had written a letter on August 16, 2021: “in which you stated that you did not believe that there is any way you can return to the Allentown School District. However, this letter did not state that you were resigning from your position as a teacher.” Id.

174. The District Solicitor wrote in an email notifying counsel about Pidgeon’s letter on September 16, 2021, that “Should Mr. Moorehead wish to submit his resignation, the termination process and the required reporting to the Department of Education could be avoided.” Exhibit 28.

175. Again, Pidgeon’s letter and the Solicitor’s email—complete with threats—make it clear that Defendants were trying to force Plaintiff to resign, so they could claim he voluntarily quit.²

176. Note well that defendant Pidgeon nowhere addressed or referenced the reasons that Moorehead listed about why he could not return—the refusal to correct the defamation and the unsafe and hostile work environment. As the executive director of HR, defendant Pidgeon should have been extremely attuned to these obviously legitimate concerns—which Pidgeon later admitted he was aware of—but he chose to ignore them out of convenience.

177. Consider also that the reinstatement letter did not even specify an actual position for Moorehead to return to, making the demand to return farcical.

178. Defendants’ tact was clear: they had hoped he would resign so they could claim he voluntarily left and were not responsible for the harm they caused to him, which is why they did not correct the defamation and took half a year before making a decision. When he did not resign

² Of course, even if Plaintiff had quit, it would have been a constructive termination. There is no possible way for Plaintiff to return the hostile and unsafe environment created by Defendants.

as they hoped, they then planned to “reinstate” him to an unspecified position, hoping that by purporting to reinstate him it would negate a claim that they had hurt his career. When Mr. Moorehead refused to play this game—as Defendants had made the District unsafe, hostile, and never corrected the defamation—it then moved to terminate him on the pre-textual ground that he “failed to show up to work” hoping that they could use this excuse to avoid liability for the egregious harm they caused Plaintiff.

179. That this pretextual termination was predetermined is illustrated by the fact that Plaintiff’s pay was stopped on September 1, 2021, weeks before the Loudermill notice was even sent. This alone is a pre-deprivation due process violation.

180. The so-called Loudermill hearing took place on September 22, 2022. At that hearing, Moorehead’s counsel extensively objected to the hearing both on substantive and procedural grounds. See generally Exhibit 31 - September 22, 2021 Loudermill Hearing Objection Transcript.

181. It was extensively explained, with supporting exhibits, that Defendants had defamed Plaintiff, refused to publicly correct and retract the false statements, and that it was impossible for Moorehead to return to an unsafe and hostile environment.

182. In other words, Defendants had poisoned the employment relationship to the point where Moorehead was already constructively terminated. No reasonable person would return to his position given the District’s malice for him and the uncorrected defamation, and a manifestly unsafe and hostile environment existed. However, Moorehead was not going to resign as if he did something and allow the District to dishonestly argue that he voluntarily left.

183. Instead, it was explained to Defendants, they needed to correct the defamation and amicably resolve the problem they had created, because Moorehead’s return was out of the

question. Note that Defendants knew the District had been poisoned against him, which is why they told him they were removing him from Raub Middle school in the first place.

184. It was also explained that the process was biased and predetermined, including because his pay had been cut without notice on September 1, 2022, two weeks before the Loudermill notice was even sent.

185. On October 12, 2021, defendant Pidgeon notified Plaintiff via a Statement of Charges that Defendants were going to be terminating him for “willful neglect of duties” for failing to report to his teaching assignment, and that a board hearing would take place. Exhibit 32.

186. Note that the District had never actually given Mr. Moorehead any teaching assignment to return to, it was only vaguely stated that he had to return. The reinstatement was a sham.

The Board Hearing Process Begins; It was a Pretextual and Biased Sham which the Board Did Not Even Participate In

187. Under the Pennsylvania School Code provisions governing termination, the two courses going forward were to follow the grievance procedure or to appear before the Board. 24 Pa. CS § 11-1133.

188. A Board Hearing must be “after full, impartial and unbiased consideration” both in process and in the adjudicator. See 24 Pa. CS §§ 11-1127, 1129.

189. The grievance procedure was out of the question. The point of that procedure is meant to get the teacher reinstated. As Plaintiff had pointed out *ad nauseum*, it was impossible for Mr. Moorehead to return given the way he had been treated and the unsafe conditions.

190. Mr. Moorehead, left with no other recourse, therefore began the board hearing process.

191. From the very start, it was clear that nothing about the Board Hearing process was going to be fair, impartial, and unbiased as required by law, and was in fact a complete sham.

192. On November 10, 2021, Plaintiff submitted a pre-hearing memorandum raising several issues:

Statement of Legal Issues

- Mr. Moorehead rejects the notion that this board hearing should be limited to “willful neglect of duties” due to the District claiming he failed to appear for school. This is a pretextual reason to cover up the unconstitutional and defamatory reasons he was suspended, subjected to a hostile work environment, and can no longer return to the school district.
- Not only is a return to the district impossible because of the overtly hostile environment, but upon admitting that Jason did nothing he was accused of, the District refused to correct the record and then placed unconscionable and unacceptable conditions on Jason returning to his employment—ignoring that it would be placing Mr. Moorehead in an unsafe environment.
- The hearing is predetermined.
- The Board is biased and not impartial, and has a substantial interest in the outcome of this matter including but not limited to because a lawsuit is currently pending against it and its members.
- The hearing officer is biased and not impartial being employed by the Board and District.

Supplemental Legal Issues

- The false statement made about Jason which created an irrevocably hostile work environment he cannot return to.
- The illegal viewpoint discrimination that occurred and continues to occur has not been addressed.
- The due process violations that occurred and continue to occur have not been addressed, including the outrageously defamatory statements that have not been corrected.
- The District and Board refusing to acknowledge or correct Mr. Moorehead’s constitutional grievances, and instead unilaterally demanding he admit to wrongful conduct and return to an unsafe environment, and then trying to pretextually fire him for not appearing for work.

Exhibit 35.

193. Plaintiff also listed the Board Members as witnesses and asked for subpoenas to be issued to compel their testimony. Id.

194. A pre-hearing conference took place on November 12, 2021. At that hearing, the new district solicitor, Jeffrey Sultanik of Fox Rothschild, presided over the conference, while the prior district solicitor, John Freund from the firm King Spry, acted as counsel for the District.

195. Sultanik refused to allow the conference to be recorded. He then stated that he would be presiding over the Board Hearing as the hearing officer, and that the board would not even attend the board hearing. Instead, he would make a recommendation the board would vote on.

196. When Sultanik was asked how he could possibly be a fair and impartial adjudicator when he had just been hired as the District solicitor (representing the Board and the administration), he denied at length the board and its members were his clients, before finally admitting that they were in fact in his clients. He also admitted that the District administration was his client, but nonsensically said that for this particular hearing he would not be representing them.

197. It is positively absurd to pretend that the District administration's and Board's own attorney could be a fair, impartial, and unbiased hearing officer when he had financial and professional duties as a lawyer to protect the District administration and Board. These are severe, unwaivable conflicts of interest.

198. Plaintiff's counsel pointed out that not only was the hearing officer biased, but the School Board itself was extremely biased and should not be hearing or voting on this matter. The Board and its members had been sued and had a financial interest in this litigation, it had allowed the defamation of Mr. Moorehead to go uncorrected, several board members had expressly participated in whipping up the community against Mr. Moorehead, and they had allowed him to

remain suspended for half a year without any actual basis—and were now trying to fire him for a pretextual reason.

199. Sultanik absurdly stated that because Moorehead had not elected to follow the grievance process under the Collective Bargaining Agreement that he was not entitled to a fair and impartial Board Hearing. This was reiterated throughout the hearing process by Sultanik and in his final recommendation.

200. This position is bizarre and unconstitutional. Regardless of whether an employee elects to follow the grievance process or go through a board hearing, the constitution requires that both procedures be fair, impartial, and unbiased. The hearing officer (again, actually just the Board's lawyer) claiming that a board hearing does not have to be fair or impartial is a blatant violation of § 1129 and the US constitution.

201. Plaintiff's counsel also pointed out that the School Code requires a **Board** Hearing. Nowhere is the Board permitted to designate its own attorney to hear the matter in absentia. Plainly, the defendant Board and its members did not want to be confronted with its atrocious conduct, or be called to testify. The biased hearing officer, who is the Board's own attorney, also refused to issue subpoenas to compel the board members to testify; he was shielding them in his role as their counsel.

202. The fact that the Board members were not present demonstrates that the decision was pre-determined.

203. In summation:

- a. the allegedly neutral hearing officer is the Board's own attorney,
- b. the Board did not even hear the matter,
- c. the hearing officer/Board's attorney would not compel the board members to testify,

- d. the hearing officer/Board's attorney was the fact-finder gauging witness credibility since the Board was not present for the "Board Hearing,"
- e. the hearing officer/Board's attorney made the termination recommendation, and
- f. the hearing officer/board attorney ruled that Plaintiff is not entitled to a fair, impartial, and unbiased board hearing as required by the School Code and US and PA constitutions.

204. Counsel for Plaintiff again expressed objections to the biased, and frankly absurd, nature of this hearing on November 18, 2021. Counsel also objected to the pretextual nature of the attempt to fire Plaintiff and the impossibility of returning to work due to the hostile and unsafe environment. Exhibit 25.

205. These concerns were dismissed out of hand, and unfair and biased limitations were imposed on the hearing process. For instance, at the conference, it had been agreed that Plaintiff would present evidence and testimony on bias before the hearing took place. Following the conference, Sultanik then decided that only briefing on bias would be permitted.

206. Furthermore, Plaintiff subpoenaed the board members and other witnesses to establish bias and that this termination was pretextual. Exhibit 37. These subpoenas were denied as irrelevant and "blatantly unrelated." Exhibit 41. These decisions were wrong, denied him due process, and were because of Sultanik's bias.

207. Sultanik also decided that he would not entertain any evidence that Moorehead could not return to work due to a hostile and unsafe environment, because he erroneously and baselessly believed that a hostile work environment only exists in cases of sex discrimination. Exhibit 43 - Day 1, at p.137, 192-93.

The Board Hearing Itself was Biased, Predetermined, and Unconstitutional Because the Hearing Officer Refused to Consider Evidence of Pretext or Hostile/Unsafe Work Environment

208. On the day of the hearing on November 22, 2021, Plaintiff submitted briefing on several issues, including the bias of the board and the hearing officer, as well as Plaintiff's hostile work environment defense.

209. The briefing noted that not only is an impartial process required by § 1129, but where a tribunal's impartiality, such as a School Board, is called into question by "prior involvement and pecuniary interest" their involvement is unconstitutional. Exhibit 42 (citing Schweiker v. McClure, 456 US 188 (1982) (emphasis added) (cited by McDaniels v. Flick, 59 F. 3d 446 (3d Cir. 1995)); see also Gibson v. Berryhill, 411 U.S. 564, 569, 93 S.Ct. 1689, 1693, 36 L.Ed.2d 488 (1973) (stating that due process requires fair and impartial hearings).

210. The brief observed that the board was biased for seven separate reasons: (1) a lawsuit was pending against the board and its members and they had a pecuniary interest, (2) the Board was involved with suspending and attacking Plaintiff, (3) the District and Board acted as a secret arm of the FBI without informing Mr. Moorehead of this Fourth and Fifth Amendment rights against self-incrimination and search and seizure, (4) Board never corrected false statements about Moorehead out of self-interest and in fact encouraged community to spread defamatory lies about Mr. Moorehead on social media and at a Board Hearing, (5) the Board is unambiguously politically biased against Mr. Moorehead, (6) the hearing result was clearly predetermined as was the Loudermill hearing, evidenced in part by the cutting of his pay two weeks before the Loudermill notice, and (7) the Board appointed its own attorney as the "neutral" hearing officer and refused to actually hear the matter. Exhibit 42.

211. The memo also pointed out that the claim by Sultanik—that Moorehead had waived his right to impartiality by electing to take a board hearing instead of electing to follow the grievance process—was nonsensical; the law specifically provides for an impartial board hearing *in the event the employee does not follow the grievance process*. See § 1129.

212. The memo went on to detail that a hostile and unsafe work environment was indeed a reason not to return to work. Federal and state employment cases are explicit that hostile and unsafe environments prevent a return to work, as do unjust accusations by an employer against an employee. See Schafer v. Board of Pub. Educ., 903 F.2d 243, 248-49 (3d Cir. 1990); Goss v. Exxon Office Systems Co., 747 F. 2d 885 (3d Cir. 1984); Schultz v. U.S. Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987) (“On the other hand, inherent in that proposition is that the agency has reasonable grounds for threatening to take an adverse action. If an employee can show that the agency knew that the reason for the threatened removal could not be substantiated, the threatened action by the agency is purely coercive.”); Barkauskie v. Indian River School Dist., 951 F. Supp. 519 (D. Del. 1996) (stating personal attacks and defamation can create hostile work environment making return to work impossible, citing to Schafer and Goss); Indiana Univ. of Penn. v. Unempl. Comp. Bd. Of Review, 202 A.3d 195 (Pa. Cmwlth. 2019) (stating that treatment of claimant during investigation that called into question her character and integrity created hostile work environment that made return to work impossible); Porco v. Unempl. Comp. Bd. of Review, 828 A.2d 426, 428 (Pa. Cmwlth. 2003) (“In hostile work environment cases, Pennsylvania courts for half a century have found that . . . unjust accusations represent adequate justification to terminate one’s employment. . . .”); Arufo v. Unempl. Comp. Bd. Of Review, 37 Pa. Commonwealth Ct. 555 (1978) (stating that an unjust “accusation [that is] ... a

very real, substantial, and serious personal affront to claimant's character and integrity" creates an "untenable" employment situation).

213. When the first part of the hearing began (there were three days of the hearing), it became apparent that Sultanik had not read the briefing and could care less about the serious issues raised.

214. On the First Day, Sultanik absurdly stated that because Mr. Moorehead did not choose to grieve this issue via the CBA, and instead chose a board hearing as he is entitled to do, that therefore he is not entitled to a fair and unbiased hearing:

MR. MALOFIY: You have to be fair and impartial. We're here for a fair and impartial Hearing. If Fox [Rothschild] can't be, they shouldn't be here today.

MR. SULTANIK: You asked me the question of why is the Collective Bargaining Agreement relevant. You have a full and fair remedy under the Collective Bargaining Agreement with an impartial Arbitrator.

Exhibit 43 - Day 1, at p.46. Mr. Sultanik went on to argue that because Mr. Moorehead did not elect to follow the grievance process under the CBA under Section 1133, which Mr. Sultanik said would have been impartial, that therefore Mr. Moorehead was not entitled to impartiality from the board or the hearing officer. Day 1, at p.49-50. He went on to state:

I am dismissing the objections with respect to the Board and Hearing Officer bias and impartiality, because of the lack of addressing the election of remedies issue in the Brief. And ultimately, the Board will make a decision on that issue once the Transcript is elicited and forwarded to the School Board for review.

Day 1, at p.59. Election of remedies is completely irrelevant to whether, upon a board hearing taking place, the board hearing has to be "fair, impartial, and unbiased." Constitutionally, any post-deprivation process must be fair and unbiased, and Section 1129 also guarantees a fair and impartial board hearing. That a barred attorney presiding as a hearing officer would claim

otherwise is unbelievable. See In Interest of McFall, 533 Pa. 24, 37 (Pa. 1992) (“A tribunal is either fair or unfair. There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings. A trial judge should not only avoid impropriety but must also avoid the appearance of impropriety.”)

215. Mr. Sultanik also improperly limited the evidence that Plaintiff could present regarding pretext and the impossibility of Mr. Moorehead returning to ASD because a hostile and unsafe work environment had been established.

216. Mr. Sultanik claimed, without any basis, that only victims of sexual discrimination could establish hostile or unsafe work environment claims that would prevent an employee from returning to work. Exhibit 43 - Day 1, at p.137, 192-93.

217. It was then revealed that Mr. Sultanik had simply refused to read Plaintiff’s briefing on this point, which provided many such cases:

MR. SULTANIK: Show me one case in Pennsylvania where this kind of legal theory applies in a nonsexual harassment situation, where an employee was reinstated by management to his former position, or to a position in the School District, and where hostile work environment prohibited or caused the employee to prevail under the circumstances, in a nonsexual harassment environment. Do you have any cases to establish that?

MR. MALOFIY: The fact that you sit here as a Hearing Officer and you question the Constitution and the violations and not --

MR. SULTANIK: That wasn't the question. I asked you for case authority.

MR. MALOFIY: It is littered, littered in the Case Law.

MR. SULTANIK: Give me one case.

MR. MALOFIY: I don't have to give you one case right here.

MR. SULTANIK: I'm asking you as the Hearing Officer to give me --

MR. MALOFIY: We briefed the issue. It's all there. If you failed to read it this morning, I can't help you.

Day 1, at p.192-93.

218. It is plain from the transcripts, communications, and Mr. Sultanik's memorandums and recommendations that he was at all times acting as solicitor for the District representing both administration and Board and protecting his clients.

219. In no way should Sultanik or the Board itself ever been handling this matter given their obvious biases and lack of impartiality.

220. Of note, another attorney from Fox Rothschild, Samuel Haaz, also sat with Sultanik during the hearing and purported to be a co-hearing officer. This was objected to as a clearly improper conflict of interest as the Board had never appointed Haaz as a hearing officer, and he literally represented the District (both the administration and Board) while acting as a hearing officer.

221. Sultanik and Haaz then claimed the hearing officer was the firm "Fox Rothschild LLP." See Day 1, at p.121-24. However, the appointment by the Board specifically states that it is only Jeffrey Sultanik of Fox Rothschild LLP." This was a blatant misrepresentation of the Board's appointment.

222. In other words, the so-called Hearing Officer misrepresented the role of his law firm, and then when called out on "making it up as he went along," he then arrogated to himself the authority to appoint a co-hearing officer from his firm.

223. The Board knew this was a huge problem and thus on February 24, 2022 purported to appoint Haaz as a co-hearing officer. See Exhibit 53. However, this post hoc appointment could not unring the bell, nor correct the manifest conflicts of interest. This further illustrates the bias and unfair nature of this process and underscores the serial due process violations.

224. Even worse, Plaintiff and his counsel were never notified about this “corrective” appointment of Haaz until after Plaintiff was terminated by the Board.

Day 1 of the Board Hearing

225. Plaintiff’s counsel placed an objection on the record to start the hearing, making it clear that Plaintiff objected to the pretextual process taking place:

At every stage of this process, first, his initial suspension, then the investigation, then the inquisition into his personal effects, at every stage the process has been the punishment. And at every stage when Mr. Moorehead has come out clean, a Boy Scout and a choir boy, that wasn't enough. So what happened was, there had to be more process, which is the punishment. . . .And at every stage we have said, and made it clear, that this is a sham. This process is a sham. This proceeding is a sham. And to have barred Attorneys in a room pretending that this is fair, neutral, and impartial is dripping with insincerity.

Exhibit 43, at p.11-12.

226. Counsel pointed out that the glaring absence of the Board at the Board Hearing was inexcusable:

The Board's going to make decisions about credibility of witnesses, but they're not here to determine the credibility of those witnesses because they're hiding. That's why they're not here. Because if they cared about Mr. Moorehead, if they cared about this community, if they cared about, the action items in this room: safety, learning, collaboration with the community, account built, and learning at all levels. But that was just discarded. You know a mirror is a very hard to thing to face when you're looking back at yourself. And it's showing something that is ugly so people hide from it.

Exhibit 43, at p.12.

227. Counsel went on to point out the fundamental disconnect from the Constitution animating this pretextual attempt to terminate Plaintiff:

Mr. Moorehead was not initially suspended because he failed to appear at work. He was suspended because that was the choice of the Board, that was the choice of the District.

And that process took months and months and months. They said Mr. Moorehead was at the Capitol building and basically breaking in and part of that insurrection. He was not. He was peaceful at all times. But the District blasted him saying he was an insurrectionist, saying he broke in and was part of the Capitol building protest—when he was not—and instead never corrected that record.

The District knew from the second day that he did nothing wrong. And they sat down and they put him through an inquisition And as he sits here today, now he's not here because he was at the Capitol building. He's not here because he did anything wrong. In fact, he smells like roses, he's a choir boy and a Boy Scout. . . . Every Attorney here knows there was an FBI investigation. And everyone is here dripping with insincerity putting this man at risk, his family at risk, his job at risk. . . .

[T]here's something called not the liberal states of America, there's something not called the conservative states of America, it's the United States of America. And we know that because we see that flag. And all of us underneath that flag, you, Mr. Sultanik the Hearing Officer, Mr. Taylor, you, Mr. Freund, and Mr. Pidgeon. But we all forget all our responsibilities and our duties when we want to assassinate our political opponents. When we all stand underneath the United States of America, we stand under the Constitution. And the election we made is that the School Board and the Administration follow the Constitution.

Exhibit 43, at p.13.

Testimony on Day 1 Establishes a Hostile Work Environment

228. At the hearing defendant Anthony Pidgeon, the Executive Director of HR, was the first to testify.

229. Mr. Pidgeon's testimony was most notable in that he admitted that a hostile work environment existed for Mr. Moorehead, but he (as head of HR) did nothing to correct it:

MR. MALOFIY: Now to be clear after receiving this letter and after understanding the concern that Mr. Moorehead had in regards to [accountability], correcting the record, and his safety, what, if anything, did you do, or what if anything did anyone do, or was

there any communication about addressing that concern of Mr. Moorehead?

MR. PIDGEON: So what our intent was when we sent the initial letter was to have a conversation with Mr. Moorehead to see where we could place him. Because the initial letter said a teaching position, ***not his previous teaching position. We realized there might have been some challenges with that.*** So I planned on having a conversation with Mr. Moorehead to get his input onto where he would feel comfortable and use his Certification within the District.

Day 1, at p.189 (emphasis added). Note that Mr. Moorehead had told Mr. Pidgeon in no uncertain terms that he did not feel “comfortable” anywhere in the district. Pidgeon later continued:

MR. MALOFIY: If I may just ask you, you said there were challenges. What kind of challenges were there at Raub? You identified there were challenges at Raub, in placing him back where he was?

MR. PIDGEON: I didn't say there were challenges at Raub, ***I said there were challenges for Mr. Moorehead at Raub.***

MR. MALOFIY: Why?

MR. PIDGEON: ***Because of the community outreach that we heard at the Board Meetings made some reference to Raub.***

....

MR. MALOFIY: What, if anything, did you do to address his concerns about [accountability], safety, and making things right?

MR. PIDGEON: I believe I referred this back to the Superintendent and our Solicitors.

....

MR. MALOFIY: What did they do? Not the communications, what did they do, if anything?

MR. SULTANIK: If you know?

THE WITNESS: I don't know.

MR. MALOFIY: ***So you don't know if anyone did anything in response to his concerns; fair statement?***

MR. PIDGEON: ***Correct.***

Exhibit 43 - Day 1, at p.195-200 (objections omitted) (emphases added).

230. The testimony was disingenuous. On the one hand Pidgeon knew it would be unsafe and hostile for Moorehead to return and said he wanted to talk to Moorehead about where he would be “comfortable” working. Yet, when pressed, Pidgeon admits he never did anything to address any of Mr. Moorehead’s clearly articulated concerns over 8 months. More than anything, these admissions by the head of HR establish that the “reinstatement” was not authentic and was merely a ruse to try to limit the District’s liability.

231. Foremost, Defendants could have corrected the defamation which makes it impossible for Plaintiff to work anywhere in the District, not just Raub Middle School. The lies Defendants had spread about Mr. Moorehead created the unsafe and hostile environment—which has gone uncorrected as of the filing of this Complaint.

232. Mr. Pidgeon also admitted he knew that Mr. Moorehead had been sent a death threat and received other harassment. Exhibit 43 - Day 1, at p.127.

233. Yet, Mr. Pidgeon admitted that even though he privately cleared Mr. Moorehead of any involvement in the Capitol Riot on July 16, 2021, no correction or retraction of the January 7, 2021 defamatory statement about Mr. Moorehead was ever done.

234. Further evidence of Pidgeon’s culpability and hostility toward Moorehead come from his testimony regarding the CBA and its prohibition on public criticism of a teacher. Pidgeon was confronted with this prohibition and pointed to the widely publicized January 7, 2021 press release about Jason Moorehead. Pidgeon incredibly claimed that the clause did not apply because Moorehead was not identified by name—even though everyone knew the release was about Moorehead, and Pidgeon had previously admitted Moorehead could not be reinstated because of community anger against Moorehead. See Day 1, at p.208.

235. Mr. Pidgeon was also asked about FBI involvement, and admitted that he had heard the FBI was involved after the fact. It is believed, given that Mr. Pidgeon also testified there was a “special” HR binder about Mr. Moorehead in his desk, that Pidgeon was intimately involved in the FBI action against Moorehead. See Exhibit 43 - Day 1, at 167.

236. Pidgeon admitted that he had never kept a special HR binder on any other employee because of an FBI investigation.

Day 2 of Testimony

237. In Day 2 of testimony, Jennifer Ramos, who was an assistant superintendent and acting superintendent, testified. Ramos, as opposed to Pidgeon, at least had the honesty to admit that the press release was in fact about Jason Moorehead. Exhibit 49 - Day 2, at p.84-85.

238. Ramos was questioned regarding the hostile and unsafe work environment and what was done by the administration to correct it. Ramos’s answers reveal that the administration never wanted Moorehead to return and that the “reinstatement” was not sincere.

239. Ramos was quizzed what they had done, such as correct the record, and had no response:

MR. MALOFIY: When people talk about an unsafe situation or an unsafe environment, what does the school district do, if anything?

MS. RAMOS: What people?

MR. MALOFIY: Anyone. They say hey, I'm concerned about my -- I'm concerned about the safety of my student. I'm concerned about the safety of a fellow teacher. I'm concerned about the safety of an administrator. What is the normal steps that are taken?

MS. RAMOS: We would work with the building administration.

MR. MALOFIY: How did you work with the building administration to consider Mr. Moorehead's concerns?

MS. RAMOS: We didn't have the opportunity to do that.

MR. MALOFIY: Why not?

MS. RAMOS: Because he didn't come in to meet with our human resources department to determine his placement.
MR. MALOFIY: Wait. You didn't even correct the record, did you?
MS. RAMOS: Didn't correct the record.

Exhibit 49 - Day 2, at p.89-90.

240. Mr. Moorehead and his counsel had been writing to Defendant for almost 1 year asking them to correct the record and publicly correct the defamation that was causing Mr. Moorehead such grief. They refused to do so, and then pretended it was because he did not meet with human resources to “determine his placement.” Defendants are well aware there is no place safe for him and that it is unreasonable in the extreme to expect him to come back given the hostile/unsafe environment, especially given Defendants’ ongoing betrayal and defamation of Plaintiff.

241. Ramos, however, did admit to FBI involvement starting the morning of January 7, 2021, essentially at the same Date and time the District began investigating Moorehead. Exhibit 49 - Day 2, at p.101. This involvement was hidden from Moorehead, in disregard of his constitutional rights.

Mr. Moorehead’s Pre-Textual Termination

242. After the Board Hearing, Plaintiff submitted a post-hearing brief which explained in detail the severe substantive and procedural flaws with the entire process. Exhibit 52.

243. Mr. Sultanik then wrote a report and recommendation, which was hidden from Plaintiff even though Plaintiff’s counsel asked for it. He gave the report to the Board on July 7, 2022, and the Board voted to terminate Mr. Moorehead 9-0 on July 28, 2022.

244. Mr. Moorehead then gave a short speech addressing how Defendants had destroyed his life and refused to correct the lie about him:

Most of you know me better as employee number 27958, and I believe I was just terminated today, by you 9-0.

And it's a shame that most of you don't even know who I am. You don't know about the 18 years I've spent giving my life to this Raub community, the amount of after school programs I've done, the amount of summer school activities I've done, the sports I've done. My best friends are there. I met my wife there. I've had thousands of great relationships with students and parents.

And Allentown is a tough place to work, the job loss is staggering. Since my suspension, a year and a half ago, we've lost 225 teachers and countless clerical, maintenance, secretarial, administration.

I never wanted to leave. I never wanted to leave.

I'm a parent. I have two kids in elementary school. And I understand the fears of the community, when they want to make sure the kids are in a safe place. A safe place to be, where they can be nurtured.

So I understand the outrage. But those parents have been lied to.

Yes, I went to Washington, the Capitol, D.C., to hear some speeches. But I was never a part of any violence. Period. Yet the District told the Allentown community that I was. That I was an active participant in the riots. That's a lie.

And with the secret help of the FBI, they knew that within 2 days, I was never a part of that. But it didn't matter. They never corrected their statement and told the community the truth about me.

The board then colluded with community groups to attack my character at Board meetings. Being called a racist and a white supremacist. They even ignored their own advice from their legal team, from the solicitor. I am none of those things.

I have a clean record. I have the support of every administrator that has been through, and I have been through a lot.

But I don't blame the community. They've been fed lies.

And once the district finally admitted to me privately that I had done nothing wrong, and that I could return, they refused to let the community know that I am safe, to alleviate both their fears and my fears of returning. And they still have not made a statement today that I am safe and I did nothing wrong.

I am being fired for refusing to come to a place that is unsafe, a situation you guys created. You've made it impossible for me to return. You destroyed my career, my character, my life, my marriage. I might lose my house. All because some of you did not like my political conservative views.

Shame on you. And the rest are too afraid to stand up and do what's right.

Thank you.

July 28, 2022 ASD Board Hearing, <https://www.youtube.com/watch?v=DkNi9bUiUIM>.

245. No Defendant took that opportunity to affirm that Plaintiff was not at the Capitol Building or otherwise correct the record.

The Report and Recommendation is Defective; and Demonstrates the Rampant Bias, Defective Process, and Pretext which Led to Plaintiff's Termination

246. On July 29, 2022, Plaintiff's counsel was sent Sultanik's report. Exhibit 54. It is apparent why it was kept from Plaintiff prior to the vote.

247. The report is legally and factually baseless, and simply ignores the issues, evidence, and law which overwhelmingly establish that this pretextual termination was done in violation of the First and Fourteenth Amendments.

248. **Bias and Unfairness of the Process** - The bias of both the Board and the hearing officer were major objections that Plaintiff raised and was not allowed to develop by the Hearing Officer.

249. The recommendation completely ignores the clear and unequivocal bias of the Board and refuses to address it in any manner. The bias of the board and the refusal of Defendants to address this clear bias is a due process violation.

250. The bias of the hearing officer was barely addressed and the discussion is nonsensical. The recommendation states of Plaintiff's objection to the hearing officer's bias only that: "Had Moorehead possessed any doubts as to the Board's ability to select an impartial Hearing Officer or Officers, Moorehead could have elected to arbitrate this matter [through the grievance process] under Section 1133 of the Collective Bargaining Agreement."

251. This is an incredible statement on several levels for a barred attorney to make. **First**, the law and constitution guarantee “full, impartial, and unbiased consideration” when an employee chooses a board hearing instead of an administrative grievance procedure. See § 1129. The statement by the hearing officer that an employee is not entitled to a fair, impartial, and unbiased board hearing if he chooses not to pursue the grievance process is Orwellian, frivolous, and counter to the text of the express statute and the Constitution.

252. The hearing officer offered this justification several times before, during, and after the board hearing—as described throughout this complaint—but never provided a single citation or justification for such an absurd conclusion. This repeated assertion that an employee such as Mr. Moorehead is not entitled to a fair, impartial, and unbiased board hearing is a straightforward due process violation, and frankly outrageous misconduct designed to deliberately subvert Plaintiff’s constitutional and statutory rights. The epitome of unfairness is an allegedly neutral hearing officer “ruling” that the board hearing can be biased, unfair, and partial.

253. **Second**, the issue was never the “ability of the board to select the hearing officer,” as the recommendation states. The issue is that the Board itself is biased, and also that the hearing officer is biased because he *is the board’s own attorney, is not neutral, and has severe conflicts of interest*.

254. **Third**, as noted in this complaint, Fox Rothschild attorney Samuel Haaz represented the Board and the District administration, yet sat as a hearing officer without any such appointment by the defendant Board. This is a severe conflict of interest. Over Plaintiff’s objection, the hearing officer permitted Haaz to sit as a hearing officer anyway.

255. The Board and Sultanik tried to “fix” this by appointing Haaz as a hearing officer on February 24, 2022 without even informing Plaintiff. Exhibit 53. Plaintiff only learned of this appointment when the recommendation as sent to his counsel on July 29, 2022.

256. **The Pretextual Nature of the Termination was Ignored** - Plaintiff repeatedly objected that the given reason for his termination, “refusing to return to work,” was clearly pretextual. Plaintiff had repeatedly argued since January and February 2021 that the defamation by Defendants, and the refusal to correct that defamation, had completely broken the employment relationship and that it was also impossible for him to return because of the unsafe and hostile environment. Unwilling to admit that they had defamed and betrayed Plaintiff, Defendants instead tried to do a fake reinstatement to a nonexistent position and, when Plaintiff observed that his return was clearly impossible, then pre-textually prosecuted him for the fake reason of failing to show up to work.

257. Despite pretext being one of the main objections to the Orwellian course of conduct by Defendants, the recommendation makes no mention or references to pretext even though pretextual terminations to cover up illegal conduct are prohibited by the law and constitution. The failure of the so-called hearing officer to address the clearly pretextual nature of Plaintiff’s termination speaks volumes.

258. **The Discussion of Hostile Work Environment is Not only Deficient, but Malicious** - Another main objection raised by Plaintiff was that Defendants had created a hostile and unsafe work environment existed and also that Defendants’ defamation towards Plaintiff, public criticism, and refusal to correct the public record had broken the employment relationship and made it impossible to return.

259. The discussion on hostile work environment in the recommendation beggars belief. Sultanik found that Mr. Moorehead had presented no evidence of a hostile work environment or of Moorehead “fearing returning to work.” Sultanik also claimed that Moorehead’s social media posts had caused the hostile work environment, not the District.

260. **First**, the record was replete with evidence of a hostile work environment. The Executive Director of HR and the acting Superintendent both admitted under oath that Mr. Moorehead could not return to his position because of “community outrage,” especially the outrage expressed at the infamous February 11, 2021 board meeting. Day 1, at p.195-200. Summaries of the statements made at that board hearing were also submitted in evidence, as was a link to a video of the board hearing.

261. Moreover, Plaintiff submitted in evidence letter after letter from counsel and Mr. Moorehead specifically identifying his fears, and administration witnesses admitted knowing about these safety concerns.

262. To claim that there was no evidence of a hostile or unsafe environment, or no evidence that Mr. Moorehead had been unjustly accused and Defendants had destroyed the employment relationship, is absurd. The highest level administrators literally admitted that he could not return to his teaching position at the hearing.

263. **Second**, Sultanik ruled before and during the hearing that any evidence related to hostile work environment *was irrelevant and was not permitted!* For instance, Plaintiff wanted to subpoena the State Police regarding the threats against Mr. Moorehead and the police report he made. The subpoena was denied by Sultanik as irrelevant. Exhibit 41. During the hearing, Plaintiff repeatedly brought up and asked questions about hostile work environment, only to be told that it was irrelevant and the witness would not answer the question. Plaintiff subpoenaed

board members and presented evidence to the Hearing Officer that the Board had personally arranged defamatory attacks on Plaintiff at a board hearing to call him an insurrections, terrorist, white supremacist, and biased educator. The hearing officer denied these subpoenas claiming they were irrelevant.

264. On the one hand the hearing officer (again, who is the defendants' lawyer) rules that evidence of hostile/unsafe work environment is irrelevant. Then in his opinion recommending termination he finds that Plaintiff should have introduced more evidence of a hostile/unsafe work environment.

265. This is a Soviet-esque Star Chamber: predetermined, biased, and shot through with double speak and double standards.

266. **Third**, Sultanik's conclusion that the District's defamation did not cause the hostile work environment is utterly frivolous. A few social media users *mistakenly* believing that Plaintiff was at the Capitol Building did not create this situation, or break the employment relationship. What created this situation was Defendants:

- a. publicly accusing Plaintiff of being at the Capitol Riot leading to a nationwide belief he rioted at the Capitol Building,
- b. refusing to correct the defamation immediately upon definitively learning it was false,
- c. publicly and falsely commenting to a newspaper that Plaintiff had engaged in un-American and subversive behavior that warrants termination,
- d. arranging for Plaintiff to be further defamed at a board hearing with the most vile accusations, and
- e. then privately admitting he was not at the Capitol Building but refusing to issue a public correction.

267. Sultanik also ignored the testimony of the HR Director. Mr. Pidgeon testified that Mr. Moorehead could not return to his teaching position because of community outrage

following the February 11, 2021 board hearing, but ignored that the evidence overwhelmingly demonstrates this outrage was whipped up by defendants Conover, Harris, and the rest of the Board.

268. Remember, Defendants tried to reinstate Plaintiff and therefore admitted that they personally did not view any such disruption as warranting termination. However, objectively, the reason he cannot return is the broken employment relationship, and the hostile environment which was created by Defendants and which Defendants refused to correct or address.

269. **The Attempt to Explain Away the Defamation** - The recommendation is also notable in its attempt to spin away the unambiguous defamation of Plaintiff committed by Defendants.

270. Sultanik spuriously claims that “The January 7, 2021 letter from the Superintendent did not name Moorehead, nor did it state that he engaged in a riot, or any unlawful activity.” Recommendation, at ¶114.

271. He also, when quoting the letter, deliberately and misleadingly alters the defamatory sentence by omitting key language. Sultanik wrote the letter said that Plaintiff was “involved in the electoral college protest...on January 6, 2021.” *Id.* at ¶115. The full quote, with the bold portion properly added back in, is clearly defamatory:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that ***took place at the United States Capitol Building*** on January 6, 2021.

Exhibit 1 (emphasis added).

272. Altering the key defamatory statement to minimize the defamatory impact demonstrates that he was always acting as the Board's attorney, not as a hearing officer, and was severely biased.

273. Other indications of bias on the part of the hearing officer were:

274. **First**, the assistant/acting Superintendent, Jen Ramos, testified that the letter was about Moorehead and that she was never confused about that fact. Exhibit 49 - Day 2, at p.84. In fact, everyone was well aware that the press release was about Moorehead and there was no other staff member it could have been about. That Sultanik would claim differently is preposterous.

275. **Second**, as the *full* quote shows, the letter falsely states that Moorehead was involved at the "protest that took place at the United States Capitol Building." This is defamatory because the reader would no doubt be aware that the protest was actually a riot, and also because Moorehead was always over 1 mile away from the Capitol Building.

276. The local and national media was quite clear that the District was claiming that Plaintiff had rioted, and for Sultanik to pretend as if this was not the case is divorced from reality. See, e.g., "Pennsylvania teacher suspended, others lose jobs over Capitol riot," (January 8, 2021), <https://www.foxnews.com/us/pennsylvania-teacher-suspended-others-lose-jobs-over-capitol-riot> (emphases added).

277. **Third**, Defendants obviously accused Plaintiff of unlawful activity. It is illegal to riot, and many of the "protesters" at the Capitol Building have in fact been criminally prosecuted. Defendants also gave comment on January 8, 2021, to the Morning Call specifically stating that Plaintiff engaged in un-American and subversive behavior that warranted termination under the School Code.

278. Please note that this summary of the glaring defects with the biased Hearing Officer's recommendation is not meant to be comprehensive, only to put Defendants on notice of the basis of Plaintiff's claims to satisfy the notice pleading standard.

279. The recommendation was arbitrary, capricious, outright false, unfair, malicious, pretextual, and biased.

Constructive Termination and Pretext

280. A resignation is considered a constructive discharge if it was "involuntarily procured" "by coercion or duress," or by misrepresentations of material fact. See Judge v. Shikellamy School District, 905 F. 3d 122 (3d Cir. 2018); Schultz v. U.S. Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987).

281. A constructive discharge also exists if the employee was subjected to a hostile work environment. Schafer v. Board of Pub. Educ., 903 F.2d 243, 248-49 (3d Cir. 1990); Goss v. Exxon Office Systems Co., 747 F. 2d 885 (3d Cir. 1984); Barkauskie v. Indian River School Dist., 951 F. Supp. 519 (D. Del. 1996).

282. State law addressing an almost identical standard demonstrates that a hostile work environment also exists when an employee's character and integrity is unjustly called into question, he is unjustly accused, or a personal affront is made that makes the employment relationship untenable. See Indiana Univ. of Penn. v. Unempl. Comp. Bd. Of Review, 202 A.3d 195 (Pa. Cmwlth. 2019) (stating that treatment of claimant during investigation that called into question her character and integrity created hostile work environment); Porco v. Unempl. Comp. Bd. of Review, 828 A.2d 426, 428 (Pa. Cmwlth. 2003) ("In hostile work environment cases, Pennsylvania courts for half a century have found that . . . unjust accusations represent adequate justification to terminate one's employment. . . ."); Arufo v. Unempl. Comp. Bd. Of Review, 37

Pa. Commonwealth Ct. 555 (1978) (stating that an unjust “accusation [that is] ... a very real, substantial, and serious personal affront to claimant’s character and integrity” creates an “untenable” employment situation).

283. An example of an involuntary resignation based on coercion is a resignation *that is induced by a threat to take disciplinary action that the agency knows could not be substantiated*. Staats v. US Postal Service, 99 F.3d 1120 (Fed. Cir. 1996). A threatened termination without cause or basis is “purely coercive.” Judge, supra.

284. The current state of the law creates a Catch-22 for governmental employees in Plaintiff’s situation regarding whether or not to resign when a hostile work environment obviously exists and/or the employment relationship has been broken.

285. Here, he was publicly defamed by his employer in a particularly severe manner several times over the course of two months. The defamation was never retracted and continues to ruin his life to this day.

286. At the moment of the public defamation there was in reality no way for him to return without an immediate retraction. This is both because the severity of the unjust accusation is a betrayal of the employee and breaks the employment relationship, and because it created a hostile and unsafe environment.

287. The fact that Defendants continued to push the defamatory lie, and even whip the community against him at the February 11, 2021 Board Hearing, simply reinforces that conclusion.

288. Mr. Moorehead had clearly been constructively terminated on January 7, 2021, and no later than February 11, 2021. Defendants created intolerable working conditions which constitute a constructive termination, which started when they publicly attacked and defamed

him. Any teacher similarly attacked by their employer would leave or consider their employment ended. Mr. Moorehead informed Defendants that he could not return for over 1 year.

289. However, if he actually resigned, then Defendants would have claimed that he “voluntarily resigned” while represented by counsel, waived his claims, and had no damages. He therefore could not resign without his seriously prejudicing his legal rights, but he also could not return to the District—as Defendants well knew.

290. This was in fact explained to Defendants. Instead of correcting the defamation and finding a way to amicably part ways, Defendants doubled down and engaged in a charade. They deviously privately admitted he had not rioted at the Capitol Building and tried to “reinstate” him to a nonexistent position *without publicly correcting the defamation*, fully aware that it was impossible for Plaintiff to return or actually reinstate him. Note that defendants Pidgeon and Ramos admitted that community outrage made it impossible for Moorehead to return to Raub Middle School; the community outrage was not limited to Raub, and there was obviously no teaching position possible he could return to anywhere in the District. Defendants repeatedly suggested he instead resign, precisely because they wanted to claim he had voluntarily left.

291. When Moorehead refused to return to an unsafe environment, and told Defendants they needed to find a way to amicably part, Defendants then maliciously terminated him on a purely pretextual ground for “not showing up to work” always completely aware that he could not return to work.

292. The legal reality is that as of January 7, 2021, and no later than February 11, 2021, Mr. Moorehead was for all intents and purposes constructively terminated, of which Defendants themselves were well aware. Every action by Defendants that came after those dates was pure

pretext by Defendants to attempt to cover up and avoid liability. This termination became official on July 28, 2022, when he was finally terminated over a year later for a pretextual reason.

Punitive Damages are Manifestly Warranted against the Defendants

293. Punitive damages are appropriate against all individual Defendants.³ Defendants, without contacting Plaintiff, publicly blasted him as a participant at the riot at the Capitol Building despite a prohibition of public criticism of teachers in the CBA. This defamation was grossly negligent, reckless, and completely outrageous.

294. However, what came afterwards solidifies the need for punitive damages, as Defendants have acted in the most unrepentant and malicious fashion unbecoming of governmental officials.

295. Defendants refused to correct the defamation upon learning it was false (they always should have known it was false), and afterwards then:

- a. publicly and falsely commented to a newspaper that Plaintiff had engaged in un-American and subversive behavior that warranted his termination knowing this was not true,
- b. arranged for Plaintiff to be further defamed at a board hearing with the most vile accusations,
- c. inexcusably delayed for six months in making a decision while they tried to dig up dirt to justify discipline, including unconstitutionally searching his devices with the help of the FBI,
- d. privately admitted he was not at the Capitol Building but refusing to issue a public correction,
- e. outrageously conditioned his reinstatement on taking “cultural competency” courses which had no connection to the issues,
- f. issued a fake reinstatement letter despite knowing that he could not return to ASD,

³ Punitive damages are only being alleged against the individual defendants in their individual capacities, and are not being alleged against the Board and District.

- g. proceeded to terminate Plaintiff on a pretextual and false basis to try to cover up their egregious misconduct,
- h. the biased board and the board's own solicitor presided over and voted to terminate Plaintiff, and
- i. secretly acted as an arm of the FBI while violating his constitutional rights against self-incrimination and unreasonable search and seizures.

296. Plaintiff's counsel repeatedly explained that each day the defamation was not corrected and he remained suspended, clouding his reputation, was evidence of malice and political persecution. Exhibit 5-25.

297. Again, to this day Defendants have never corrected the defamation of Plaintiff and apparently believe that they are above the law.

298. All named Defendants were involved in this process, all named Defendants had final policymaking authority, all named Defendant participated in this disciplinary process, all named Defendants supervised the disciplinary process against Plaintiff, and all named Defendants ratified the conduct toward Plaintiff. These actions by Defendants were willful, intentional, evil, malicious, and at a minimum outrageous in that they showcased a reckless and callous indifference to Plaintiff's federally protected rights. See Coleman v. Kaye, 87 F.3d 1491, 1497 (3d Cir.1996) ("[P]unitive damages may be awarded under 42 U.S.C. § 1983 `when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.'").

299. Punitive damages are needed to punish the Defendants for their conduct and deter Defendants and others from future similar behavior. Defendants have demonstrated extreme unrepentance and have weaponized their governmental positions in support of their left-wing ideology and are using their governmental power to attack their political opponents.

Overall Damages

300. As a result of all of the actions and omissions of the Defendants, Plaintiff has suffered the following harms:

- a. Loss of past and future wages and benefits
- b. Loss of career
- c. Loss of position
- d. Loss of reputation
- e. Loss of free speech rights
- f. Loss of due process,
- g. Severe personal and professional damage; and
- h. Severe mental and emotional damages.

PARTIES

301. Plaintiff Jason Moorehead is an adult individual residing at 5360 Celia Drive, Allentown, PA 18106. He worked for the District for 18 years, was a tenured teacher, and could only be disciplined and terminated for just cause in accordance with due process.

302. Defendant School District of the City of Allentown, (“Allentown School District” or “District”) is a public school district in Allentown, Pennsylvania, which employed Jason Moorehead as a tenured teacher for 18 years.

303. Defendant Board of School Directors of the School District of the City of Allentown, (“Board”) is the governing body of the Allentown School District.

304. Defendant Thomas Parker was Superintendent of the Allentown School District at all relevant times up until May 1, 2021, and is a resident of Michigan. Defendant Parker directly participated, supervised, ratified, and acquiesced in Plaintiff’s discipline and termination. Defendant is being sued in his individual capacities.

305. Defendant Anthony Pidgeon was the Executive Director of Human Resources for ASD at all relevant times up until November 2021, and is a resident of Pennsylvania. Defendant Pidgeon directly participated, supervised, ratified, and acquiesced in Plaintiff’s discipline and termination. Defendant is being sued in his individual capacities.

306. Defendant Jennifer Ramo was an Assistant Superintendent and/or Acting Superintendent during the relevant events, and is a resident of Pennsylvania. Defendant Ramos directly participated, supervised, ratified, and acquiesced in Plaintiff’s discipline and termination. Defendant is being sued in her individual capacities.

307. Defendant Marilyn Martinez was interim superintendent from May 1, 2021 to July 22, 2021, and is a resident of the Pennsylvania. Defendant Martinez directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

308. Defendant John D. Stanford has been superintendent from on or around November 15, 2021 to Present, and is a resident of the Pennsylvania. Defendant Stanford directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in his individual capacities.

309. Defendant Nancy Wilt is and was the president of the ASD Board of School Directors at all relevant points, and is a resident of the Pennsylvania. Defendant Wilt directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

310. Defendant Nicholas Miller is and was a member of the Board at all relevant times, was vice president in 2021, and is a resident of the Pennsylvania. Defendant Miller directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in his individual capacities.

311. Defendant Sara J. Brace was a member of the Board at all relevant times until her term expired in 2021 and is a resident of Pennsylvania. Defendant Brace directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

312. Defendant Lisa A. Conover is vice president of the Board starting in late 2021, was and is a board member at all relevant times, and is a resident of Pennsylvania. Defendant Conover

directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

313. Defendant Phoebe D. Harris is and was a member of the Board at all relevant times and is a resident of the Pennsylvania. Defendant Harris directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

314. Defendant Cheryl L. Johnson-Watts was a member of the Board at all relevant times until October 21, 2021, and is a resident of the Pennsylvania. Defendant Johnson-Watts directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

315. Defendant Audrey Mathison is and was a member of the Board at all relevant times and is a resident of the Pennsylvania. Defendant Mathison directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

316. Defendant Charles F. Thiel is and was a member of the Board at all relevant times and is a resident of the Pennsylvania. Defendant Thiel directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in his individual capacities.

317. Defendant Linda Vega was a member of the Board at all relevant times until December 16, 2021 and is a resident of the Pennsylvania. Defendant Vegas directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

318. Defendant Patrick Palmer is and was a member of the Board from January 16, 2022, to present day, and is a resident of the Pennsylvania. Defendant Palmer directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in his individual capacities.

319. Defendant LaTarsha Brown is and was a member of the Board from December 16, 2021, to present day, and is a resident of the Pennsylvania. Defendant Brown directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

320. Defendant Jennifer Lynn Ortiz is and was a member of the Board from December 16, 2021, to present day, and is a resident of the Pennsylvania. Defendant Ortiz directly participated, supervised, ratified, and acquiesced in Plaintiff's discipline and termination. Defendant is being sued in her individual capacities.

321. The individual defendants are also being sued in their official capacity for the relief requested in the counts for a name-clearing hearing and declaring section 1122 unconstitutional.

322. When Plaintiff refers to "defendants" or the Allentown School District or the "District" or the Board he is referring to all defendants jointly, unless otherwise specified.

323. All Defendants are alleged to be liable for the actions and omissions of attorneys John Freund III, Brian Taylor, King Spry Herman Freund & Faul LLC, Jeffrey Sultanik, Samuel Haaz, and Fox Rothschild LLP as that conduct occurred in the scope of their agency and employment for Defendants, including as District Solicitors.

324. All individual defendants, including the defendant board members, were aware of, approved, and ratified the public statements by the District on January 7, 2021, and suspension of

Plaintiff without Loudermill notice or hearing on January 7, 2021. Defendants were also aware of, approved, and ratified the public statements on January 8, 2021, and also the public statements made about Mr. Moorehead in early February 2021, and at the February 11, 2021 board hearing. Furthermore, all Defendants supervised, participated in, and ratified the course of conduct against Moorehead from January 6, 2021, to present. Despite the entirety of the targeting of Plaintiff being utterly lawless the individuals defendants participated, supervised, approved, ratified, and acquiesced to the illegal attacks on Jason Moorehead.

325. The individual defendants are Democrats and fairly characterized as left wing politically.

326. All individual defendants' conduct was of the sort that when considered separately, and in conjunction, was the type that imposes liability on the Allentown School District and the Board.

327. An individual defendant's "conduct implements official policy or practice or custom under several types of circumstances, imposing liability on the entities which employ them, including when (1) the individual acted pursuant to a formal government policy or a standard operating procedure long accepted within the government entity, (2) the individual himself has final policy-making authority such that his conduct represents official policy, or (3) a final policy-maker renders the individual's conduct official for liability purposes by having delegated to him authority to act or speak for the government, or by ratifying the conduct or speech after it has occurred." Hill v. Borough of Kutztown, 455 F. 3d 225, 245 (3d Cir. 2006); (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 478-484, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986); McGreevy v. Stroup, 413 F.3d 359, 367 (3d Cir.2005); LaVerdure v. County of Montgomery, 324 F.3d 123, 125-126 (3d Cir. 2003)).

328. All Defendants had final policymaking authority, or had been delegated final policymaking authority.

329. Here, the actions by Defendants were not that of a rogue employee, but were entirely sanctioned by the District, Board, and chief executive at all points, from January 7, 2021 to present. This included:

- a. Publicly criticizing, condemning, stigmatizing, defaming, retaliating, and insulting Plaintiff on January 7, 2021, and afterwards up through February 11, 2021, due to political animus for Plaintiff's political affiliations, and disagreement with the viewpoints expressed in Plaintiff's social media posts. These public and defamatory attacks on Plaintiff made it impossible for him to return to the District.
- b. Indefinitely and illegally suspending Plaintiff on January 7, 2021, without Loudermill notice or hearing, and with intent to terminate, for an unconstitutional reason.
- c. Claiming that Defendants were doing an investigation of Plaintiff, when no real investigation took place or was necessary.
- d. Orchestrating defamatory attacks at the February 11, 2021 board meeting on Plaintiff.
- e. Not providing a prompt hearing or Loudermill notice after his suspension, and delaying the process six months.
- f. Secretly acting as an arm of the FBI without informing Plaintiff of his constitutional rights against self incrimination and unreasonable search and seizure.
- g. Issuing a fake and pretextual Loudermill notice in April 2021.
- h. Holding a sham "due process hearing" on May 5, 2021.
- i. Refusing to correct the knowingly false defamatory statements made on January 7, 2021, January 8, 2021, and February 11, 2021.
- j. Issuing a fake reinstatement notice, to a nonexistent position, when Defendants were aware that Plaintiff could not return to ASD.
- k. Predetermining Plaintiff's termination for failing to show up to work.
- l. Terminating Plaintiff for the pretextual reason of failing to return to work.

- m. Holding a biased, unfair, and not impartial board hearing in violation of § 1129 and the US and PA constitutions, and appointing a biased hearing officer.
- n. Arbitrarily and capriciously ignoring Plaintiff's objections to the given reason for the board's termination, including pretext, hostile/unsafe work environment, broken employment relationship, and bias.
- o. Voting to terminate Plaintiff for a pretextual reason.

330. From January 7, 2021 onward, the District, Board and the individual defendants denied Plaintiff due process.

331. Not only were all these actions and omissions done at the direction of the District and Board's final policy makers, and ratified by the District and Board's final policy makers, but all actions and omissions that are the subject of this lawsuit were delegated by the District and Board to the District's employees.

332. Restated, all actions by the Defendants in this lawsuit were "official" actions which impose liability on the entities, and were not the actions of individual employees acting without official imprimatur. Furthermore, even if a district employee did not have "official" authority at the time of an action or omission, the District and Board ratified that conduct by continuing and participating in the persecution of Plaintiff.

333. The actions and omissions of the conduct were intentional, malicious, reckless, and/or negligent and demonstrated willful indifference and callous disregard for Plaintiff's rights.

JURISDICTION AND VENUE

334. Jurisdiction (and venue) over the parties in the state and federal Courts of the Commonwealth of Pennsylvania is proper. Specifically, jurisdiction as to the Defendants is

proper because they are all residents of the Commonwealth and conduct business here related to the claim at issue. Defendants transacted business in this Commonwealth and caused harm and compensable injury to Plaintiff and the assignors by acts or omissions committed in the Commonwealth of Pennsylvania that are the subject of the present complaint. All such business and harm occurred in the County of Lehigh.

335. All federal claims are brought pursuant to and under 42 U.S.C. § 1983.

COUNT I - FIRST AMENDMENT RETALIATION FOR EXPRESSION,
ASSEMBLE, AND PETITION FOR REDRESS OF
GRIEVANCES

Jason Moorehead

v.

All Defendants

336. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

337. “[A] State may not discharge an employee on a basis that infringes that employee’s constitutionally protected interest in freedom of speech.’ *Rankin v. McPherson*, 483 U.S. 378, 383, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987). To establish a First Amendment retaliation claim, a public employee must show that (1) his speech is protected by the First Amendment and (2) the speech was a substantial or motivating factor in the alleged retaliatory action, which, if both are proved, shifts the burden to the employer to prove that (3) the same action would have been taken even if the speech had not occurred. *See Gorum v. Sessoms*, 561 F.3d 179, 184 (3d Cir.2009).” *Dougherty v. Sch. Dist. of Phila.*, 772 F.3d 979, 986 (3d Cir. 2014). The courts also hold that there are an additional two elements: (4) the employee also has to show that any

ordinary employee in Plaintiff's circumstances would be deterred from engaging in similar speech by the Defendants' retaliatory conduct, and (5) that Defendants acted under color of law. Id.

338. Dougherty applies the Supreme Court's Garcetti v. Ceballos, 547 U.S. 410, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006) and Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) tests, which address when a public employee's speech is protected and the considerations taken into account when dismissing an employee for speech-related reasons.

339. Here, the protected expression in question was his attendance and political support for the January 6, 2021 Rally, and social media posts and two social media comments made by Plaintiff on January 6, 2021. The content was unrelated to Plaintiff's employment.

340. Specifically, Plaintiff listened to speeches at the rally at the Washington Monument on January 6, 2021, and went to show support for President Trump. In doing so he engaged in political speech, engaged in political affiliation, assembled, and petitioned for redress of grievances.

341. Early in the morning he posted a picture of himself stating "Doing my civic duty." See Exhibit 56.

342. At 1:45 pm, before any rioting at the Capitol Building and/or before Plaintiff had any way to know that anything was occurring at the Capitol Building, he posted a picture of himself getting a hot dog near the Washington Monument. The post said "Waiting for a hot dog during (what hopefully CNN will call) a 'mostly peaceful protest' while at the Capital!" Note that this post referenced the "capital" not the "capitol" building. Id.

343. This post was mocking CNN's infamous broadcast where a reporter and chyron characterized a leftist mob burning down Kenosha, WI as "fiery but mostly peaceful protests":



344. Plaintiff was making a political critique of the Left in general, and CNN specifically, about how extreme violence (riots, looting, 30 plus deaths, billions in damage) was excused for 6 months by the Left because it was viewed as “for a good cause,” while conservative protests did not receive such slavish praise and excusing of violence. This was and is a common critique of the left and CNN among conservatives.

345. As the day progressed, Plaintiff made two more comments on social media posts.

346. On a post by another user he commented “This!” to a meme which stated: “Don’t worry everyone the Capitol is insured.” Id.

347. This was a reference to, and critique of, a common Left-wing excuse that it was okay for rioters to destroy businesses, buildings, and property in the Summer of 2020 because they were allegedly insured. See, e.g., Nellie Bowles, “Businesses Trying to Rebound After Unrest Face a Challenge: Not Enough Insurance,” New York Times (Nov. 9, 2020), <https://www.nytimes.com/2020/11/09/business/small-business-insurance-unrest-kenosha.html> (“It’s a prominent refrain these days from activists in the aftermath of arson and looting — businesses have insurance. Buildings can be repaired. Broken glass is a small price to pay in a

movement for justice.”). Plaintiff was pointing out that the Left and liberals were hypocrites and only worried about violence when it did not serve their political ends.

348. He also commented on a meme posted by another user. The meme was a picture of the absurd Viking man who sat on the dais in the Capitol Building, and captioned “Protestor challenges Pelosi for speaker of house via trial by combat circa 2021,” a joke reference to the popular TV show Game of Thrones. Plaintiff’s comment was “Wrong on so many levels, but hilarious none the less.” See Exhibit 56.

349. His attendance at the Rally, and speech in his social media posts, is squarely protected and any retaliation by Defendants because of this speech, affiliation, assembly, or petitioning for redress of grievances violated the First Amendment.

350. Furthermore, any retaliation against Plaintiff because of the perceived viewpoint of his opinions, his peacefully attending the Rally, or Defendants’ perception of his opinions concerning election fraud is unconstitutional.

351. It must be noted, Defendants were unambiguous on January 7 and 8, 2021, that he had been suspended indefinitely with intent to terminate for taking part in the protest/riot at the Capitol Building and thereby participating in un-American and subversive actions and doctrines, which is a ground for termination under section 1122. Only afterwards, once they realized that they had defamed him, did they start trying to absurdly justify his suspension as because of these social media posts and comments.

First Element - Whether the Speech is Protected

352. The first element to be satisfied is whether the employee’s speech is protected by the First Amendment.

353. “As the Supreme Court has reiterated time and time again, ‘free and unhindered debate on matters of public importance’ is ‘the core value of the Free Speech Clause of the First Amendment.’ *Pickering*, 391 U.S. at 573, 88 S.Ct. 1731. Accordingly, ‘public employees do not surrender all their First Amendment rights by reason of their employment.’ *Garcetti*, 547 U.S. at 417, 126 S.Ct. 1951. At the same time, the Supreme Court also aptly recognizes the government’s countervailing interest—as an employer—in maintaining control over their employees’ words and actions for the proper performance of the workplace. *See id.* at 418-19, 126 S.Ct. 1951. Thus, ‘[s]o long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.’ *Id.* at 419, 126 S.Ct. 1951.” Dougherty, 772 F.3d at 993-94.

354. Under Garcetti there is a three-step inquiry to determine if speech is protected by the First Amendment: (1) the employee must speak as a citizen not an employee, (2) the speech must involve a matter of public concern, and (3) the government must lack an ‘adequate justification’ for treating the employee different than the general public based on its needs as an employer under Pickering. *See Dougherty*, 772 F.3d at 987. Under Pickering the courts “‘balance... the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.’ 391 U.S. at 568, 88 S.Ct. 1731. The more tightly the First Amendment embraces the employee’s speech, the more vigorous a showing of disruption must be made by the employer. *McGreevy*, 413 F.3d at 365.” Dougherty, 772 F.3d at 991.

355. There is no question under Garcetti and Pickering that Plaintiff’s speech is protected.

356. **First**, Plaintiff's private attendance at the Rally in support of President Trump is protected speech and affiliation unconnected to his job, and was also protected assembly and petition to his government for redress of grievances. Defendants' statements, comments, and actions—especially leading up to and at the February 11, 2021 board hearing—demonstrate that they consider Plaintiff's support for President Trump a reason to discipline Plaintiff and publicly defame and stigmatize him as an “insurrectionist,” “terrorist,” “white supremacist,” “racist,” “bigot,” “biased educator,” and a host of other vile accusations.

357. The social media posts and comments in question by Plaintiff were as a private citizen and were unconnected to his employment. They were not made in the course of his official duties and had nothing to do with his job.

358. **Second**, the expression in question was in fact on matters of public concern—hotly contested social and political issues—unrelated to his job and which he directed to the public as a private citizen. Plaintiff's political speech on non-school issues in a non-school setting is afforded the broadest protection, as a private citizen.

359. **Third**, the governmental Defendants have the heaviest burden—a burden they cannot meet—showing that Plaintiff's speech could cause disruption and that they should treat him differently than a member of the general public. The Pickering test arose to address where the speech in question has some relation to the employee's job which could cause disruption in the workplace.

360. Here, the fact that Defendants purported to reinstate him on July 16, 2021, demonstrates that any potential disruption was not actionable or sufficient to suspend or terminate him even in Defendants' own eyes.

361. Note that any disruption was the result of social media users erroneously and baselessly believing Plaintiff was at the Capitol Building, not the content of the posts—erroneous beliefs which Defendants’ defamation extraordinarily amplified and reinforced.

362. Indeed, Plaintiff attended a political rally and made several short political comments on social media. Nothing about this speech was extraordinary, warranted his suspension with no notice or hearing, warranted any discipline, warranted Defendants viciously attacking and defaming him, and certainly did not justify six months of suspension.

363. As noted throughout this complaint, the citation to his social media speech was done post hoc as a pretext after Defendants realized their publicly stated reason for Plaintiff’s suspension was false.

364. This type of *post hoc* rationalization is not only viewed as pretext by the courts, but also as evidence of viewpoint discrimination. American Freedom Defense v. Washington Metro., 901 F. 3d 356, 366 (D.C. Cir. 2018). Pretextual and insincere excuses to justify viewpoint discrimination are to be disregarded. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 146–48, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000).

365. Controversial political speech is exactly the type of speech meant to be protected by the First Amendment. McIntyre v. Ohio Elections Comm’n, 514 U. S. 334, 347 (1995) (“[A]dvocacy of a politically controversial viewpoint . . . is the essence of First Amendment expression”). Indeed, the Supreme Court has consistently and repeatedly held that “the First Amendment protects ‘even hurtful speech on public issues to ensure that we do no stifle public debate.’” Mahanoy Area School District, Petitioner V. B. L., 141 S. Ct. 2038 (2021) (quoting Synder v. Phelps, 562 (U.S. 443, 461 (2011))).

366. The Mahanoy court held that schools have:

an interest in protecting a student’s unpopular expression, especially when the expression takes place off campus. America’s public schools are the nurseries of democracy. Our representative democracy only works if we protect the “marketplace of ideas.” This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the People’s will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection.

Id.

367. Where a public employer claims the right to punish speech because of “disruption,” the Supreme Court holds that “When it comes to political or religious speech that occurs outside school or a school program or activity, the school *will have a heavy burden to justify intervention.*” Id. (emphasis added).

368. Note that the Mahanoy court was analyzing out of school speech *by a student*—where schools have a hypothetical interest in regulating student speech because of the school’s parental role—but still noted that schools have a heavy burden to justify intervention. It further observed that if the student in question had been “an adult, the First Amendment would provide strong protection.” Id. at 2047.

369. Consider that a school’s attempt to justify intervention over an *adult* employee’s out of school political speech, where the school does not serve in a parental role, is a practically impossible burden for Defendants to satisfy.

370. Allowing Defendants to claim that it can terminate employees for controversial speech would give carte blanche to the Heckler’s Veto and render the First Amendment a dead letter.

371. Thus, Plaintiff’s speech is squarely protected by the First Amendment.

Second and Third Elements - Defendants Retaliated against Plaintiff Because of His Protected Speech

372. The second element is that Plaintiff must show that his protected speech was a “substantial or motivating” factor in retaliatory actions taken against him by Defendants, and that there was not some other legitimate reason for the discipline. In other words, he needs to show causation. Mirabella v. Villard, 853 F. 3d 641, 651-52 (3d Cir. 2017).

373. In a retaliation claim, the courts ask “whether the Government is punishing the plaintiffs for exercising their rights.” Id. (quoting Miller v. Mitchell, 598 F.3d 139, 148 n.9 (3d Cir. 2010)).

374. Where the retaliation includes “official speech” by the Defendants the Courts ask whether there was “a threat, coercion, or intimidation, intimating that punishment, sanction, or adverse regulatory action will follow.” Id.

375. Here, there is no question that the governmental employer punished Plaintiff for exercising free speech rights on political and social issues they disagreed with, and that Defendants’ official speech included overt threats, coercion, stigmatization, defamation, and intimidation.

376. It is not proper or constitutional to discipline and otherwise retaliate against a teacher engaged in out of school political expression because of “emotion” and “controversy.” See Exhibit 1.

377. Plaintiff was kept suspended for six months by Defendants because of the content of his speech, who he assembled with, and the content of his grievances. He was also publicly attacked and defamed by Defendants on January 7, January 8, in early February, and at the Board Meeting on February 11, 2021.

378. Plaintiff was expressly told by Defendants that the adverse actions by Defendants against him were because of the content of his social media posts, which are protected speech. Given that Defendants actually did suspend Plaintiff without warning or notice for his social media posts, and then later terminated him, this violated the First Amendment.

379. Defendants also essentially admitted to First Amendment violations when they told the Morning Call on January 8, 2021, that Moorehead was being disciplined and investigated for participating in un-American and subversive doctrines. This is straightforward content-based discrimination which is illegal.

380. There are many specific examples of retaliatory actions which are independently and jointly actionable:

- a. Publicly criticizing, condemning, stigmatizing, defaming, retaliating, and insulting Plaintiff on January 7, 2021, and afterwards up through February 11, 2021, due to political animus for Plaintiff's political affiliations, and disagreement with the viewpoints expressed in Plaintiff's social media posts. These public and defamatory attacks on Plaintiff made it impossible for him to return to the District.
- b. Indefinitely and illegally suspending Plaintiff on January 7, 2021, without Loudermill notice or hearing, and with intent to terminate, for an unconstitutional reason.
- c. Claiming that Defendants were doing an investigation of Plaintiff, when no real investigation took place or was necessary.
- d. Orchestrating defamatory attacks at the February 11, 2021 board meeting on Plaintiff.
- e. Not providing a prompt hearing or Loudermill notice after his suspension, and delaying the process six months.
- f. Secretly acting as an arm of the FBI without informing Plaintiff of his constitutional rights against self-incrimination and unreasonable search and seizure.
- g. Issuing a fake and pretextual Loudermill notice in April 2021.
- h. Holding a sham "due process hearing" on May 5, 2021.

- i. Refusing to correct the knowingly false defamatory statements made on January 7, 2021, January 8, 2021, and February 11, 2021.
- j. Issuing a fake reinstatement notice, to a nonexistent position, when Defendants were aware that Plaintiff could not return to ASD.
- k. Predetermining Plaintiff's termination for failing to show up to work.
- l. Terminating Plaintiff for the pretextual reason of failing to return to work.
- m. Holding a biased, unfair, and not impartial board hearing in violation of § 1129 and the US and PA constitutions, and appointing a biased hearing officer.
- n. Arbitrarily and capriciously ignoring Plaintiff's objections to the given reason for the board's termination, including pretext, hostile/unsafe work environment, broken employment relationship, and bias.
- o. Voting to terminate Plaintiff for a pretextual reason.

381. All the retaliatory actions were intended as punishment, and were taken by Defendants because they desired to punish Plaintiff for expressing viewpoints they disagreed with.

382. Note that even a baseless suspension with pay for a retaliatory reason is itself legally actionable on its own and by itself. See Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011).

383. Smith illustrates the egregious nature of Defendants' actions. Smith held that a suspension without notice or a hearing is an extreme measure only appropriate in cases where public safety is directly implicated—a reason which is not even remotely applicable in this case. Id.

384. Here, Plaintiff was suspended without notice or hearing on January 7, 2021, and simultaneously viciously attacked by the District Superintendent and the District's official social media accounts. It is clear from the public and private statements made by the District that this was done with the intent to terminate Plaintiff.

385. The court hold that it is actionable where “exercise of [plaintiff’s] First Amendment right of speech [used] to initiate a baseless prosecution.” Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 797 (3d Cir. 2000).

386. As noted, the third element of a First Amendment retaliation claim states that when Plaintiff has shown viewpoint retaliation played a part in his termination, then the burden is on the Defendants to show that there was some other legitimate reason for their actions. See Connick v. Myers, 461 U.S. 138, at 152-53 (1983) (explaining that the greater the extent to which the speech involves matters of public concern, the stronger the employer’s showing must be). If Defendants can establish a prima facie legitimate reason for disciplining Plaintiff and that an illegal reason was not a substantial motivating factor, then the burden shifts back to Plaintiff to show pretext.

387. The evidence, and Defendants’ own admissions, overwhelmingly prove that Defendants’ actions were retaliation for Plaintiff’s political opinions and attendance at the Rally, the content of Plaintiff’s social media posts, as well as the uncorrected defamatory accusation he had rioted at the Capitol Building, and that they cannot meet any such burden.

388. To the extent defendants try to claim that Plaintiff was terminated for not showing up to work, that is pure pretext as explained throughout this complaint.

389. Defendants also cannot meet their burden because it is glaringly evident that, at a minimum, political malice and viewpoint discrimination was a significant reason and/or a substantial motivating factor for the discipline. Mirabella, 853 F. 3d at 651-52. Where the illegitimate reason is still a substantial motivating factor, Defendants lose the case without any burden shifting.

Fourth and Fifth Element - That an Ordinary Employee would Be Deterred from Engaging in Protected Speech and that Defendants Acted Under Color of Law

390. The fourth element is that an ordinary employee would be deterred by the retaliatory actions of the employer, and the fifth is that the Defendants acted under color of law.

391. Here, there is no question, given the public condemnation of Plaintiff by Defendants, his illegal six month suspension, and the pretextual discipline against him that an ordinary employee in Plaintiff's position will be deterred from privately posting political expression on social media, attending conservative rallies, petitioning the government, assembling, or otherwise expressing any conservative opinion. Indeed, the overt defamatory attacks made on Plaintiff to damage his job and career would deter any reasonable employee from engaging in speech to avoid public vivisection and loss of employment.

392. Defendants at all points acted under color of law and held themselves out as having the authority and right to take the retaliatory actions against Plaintiff.

393. As noted, Plaintiff was in fact suspended for six months and then terminated because of the content of his speech and his political opinions. This is also the reason the defamation has never been corrected.

The Individual Defendants are Not Entitled to Qualified Immunity

394. When governmental officials are sued in their individual capacities under § 1983, they can only claim qualified immunity if the Constitutional rights at issue were not clearly established.

395. Here, the right at issue is Plaintiff's right to freedom of speech in non-school settings on issues not related to the school district.

396. Courts generally look to the Supreme Court and Courts of Appeal as to whether a right is clearly established; however, other authority may be cited as well.

397. Here, the right of public employees to speak freely about political issues in non-school settings on matters of public concern is near absolute.

398. Indeed, the right to free speech in the First Amendment which protects Plaintiff's social media posts is well known.

399. The case law is likewise clear that public employees have a right to speak out on issues of public concern, outside of work, as explained by the Third Circuit in Dougherty v. Sch. Dist. of Phila., 772 F.3d 979, 993-94 (3d Cir. 2014):

- a. "Since at least 1967, "it has been settled that a State cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression." Connick, 461 U.S. at 142, 103 S.Ct. 1684 ; see also Rankin, 483 U.S. at 383, 107 S.Ct. 2891 (finding the same principle "clearly established"). In the case at bar, Dougherty's particular type of speech—made as a concerned citizen, purporting to expose the malfeasance of a government official with whom he has no close working relationship—is exactly the type of speech deserving protection under the Pickering and Garcetti rules of decision and our subsequent case law. See, e.g., Pickering, 391 U.S. at 566, 88 S.Ct. 1731 (protecting speech by teacher to local newspaper criticizing the school board and the superintendent's allocation of school funds); O'Donnell, 875 F.2d at 1060, 1061-63 (protecting speech by chief of police to local television station that accused township supervisors of various corrupt practices, legal improprieties, and abuses of their positions); Watters,

55 F.3d at 897–98 (protecting speech by program manager to local newspaper criticizing departmental program the employee oversaw where dispute existed over cause of disruption); Baldassare, 250 F.3d at 199–200 (protecting investigation into alleged wrongdoing of law enforcement officers where there was no “alter ego” relationship). Thus, Appellants had fair notice that their retaliation against Dougherty’s constitutionally protected speech would not be shielded by qualified immunity.”

400. This case is far more clear-cut than even those cases cited by Dougherty. The cases cited by Dougherty all involved speech that at least related in some way to the governmental employer’s operations.

401. Here, the speech in dispute was attendance of political rallies and private political expression on Plaintiff’s private social media completely unrelated to his employment.

402. All individual Defendants knew and should have known that Plaintiff’s speech was protected as evidenced by longstanding Third Circuit and Supreme Court precedent on First Amendment Retaliation and Fourteenth Amendment Due Process protections. They therefore have no qualified immunity.

403. As a result of the First Amendment retaliation against Plaintiff, he has suffered grievous harm, including to his career, economically, mentally, emotionally, reputationally, personally, and professionally.

404. Plaintiff also demands punitive damages against all Defendants for their outrageous and blatantly unconstitutional conduct which showed, at a minimum, a reckless indifference to his rights.

COUNT II - FIRST AMENDMENT RETALIATION FOR POLITICAL AFFILIATION

Jason Moorehead

v.

All Defendants

405. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

406. To make out a claim of discrimination based on political association, a public employee must allege (1) that the employee works for a public employer in a position that does not require a political affiliation, (2) that the employee maintained a political affiliation, and (3) that the employee's political affiliation was a substantial or motivating factor in the adverse employment decision. Goodman v. Pennsylvania Turnpike Com'n, 293 F.3d 655, 663-664 (3d Cir. 2002). Plaintiff must also show that an ordinary employee in his circumstances would be deterred from holding and expressing his political affiliations, and that Defendants acted under color of law.

407. Here, Plaintiff's position as a tenured teacher does not require a political affiliation.

408. Plaintiff's private social media contained and expressed statements of political affiliation and support for Republicans, conservatives, and President Donald J. Trump.

409. As described throughout this complaint, Defendants took adverse action against Plaintiff both because he affiliated with President Trump, and also because of the perceived political affiliations his social media posts conveyed.

410. In general, it has to be taken into account that Defendants' personnel and culture are overwhelmingly liberal and Democratic.

411. The tenor of the public debate, including inside Defendant school district, is now that any person perceived as having unacceptable opinions can and should be canceled for being offensive, as Defendants stated publicly and privately to Plaintiff.

412. Defendants have extreme animus for Plaintiff based on his perceived political affiliations, especially as indicated by the refusal to retract the defamation on January 7 and 8, 2021, and the outrageous collusion to destroy Plaintiff's reputation and career on February 11, 2021.

413. As a direct and proximate result of Plaintiff's perceived political associations, political positions, and perceived opposition to Defendants' favored political support groups, he was suspended by Defendants, and then later terminated for these reasons.

414. Plaintiff's political affiliations were a substantial motivating factor in Defendants disciplining him. There were no legitimate reasons for his discipline, as described *supra*, and any such reasons were also pretextual.

415. Note that as with the free speech retaliation claim, the rights at issue are longstanding and indisputable. The right to engage in Political Activities and associate and identify as one likes in nonschool settings is expressly recognized. As a result, no defendant being sued on an individual basis can invoke qualified immunity.

416. As a result of the First Amendment retaliation against Plaintiff, he has suffered grievous harm, including to his career, economically, mentally, emotionally, reputationally, professionally, and personally.

417. Plaintiff also demands punitive damages against all Defendants for their outrageous and blatantly unconstitutional conduct which showed, at a minimum, a reckless indifference to his rights.

**COUNT III - PENNSYLVANIA SCHOOL CODE SECTION 1122
VIOLATES THE US AND PENNSYLVANIA CONSTITUTIONS'
GUARANTEE TO FREEDOM OF EXPRESSION, ASSOCIATION,
ASSEMBLY, PETITION FOR REDRESS OF GRIEVANCES, AND DUE
PROCESS**

Jason Moorehead

v.

All Defendants

418. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

419. This is both a facial challenge to the constitutionality of Pennsylvania School Code § 1122 as drafted, and as applied to Plaintiff in this case. He has standing to challenge this law as a tenured professional teacher for 18 years who was subject to the law, as a certified teaching professional who is subject to the law, and because he alleges he was unconstitutionally suspended, defamed, and ultimately terminated for allegedly violating section 1122, defamation which remains uncorrected to this day.

420. The First Amendment to the Federal Constitution guarantees that freedom of speech, affiliation, assembly, and petition for redress of grievances shall not be infringed.

421. Article I, Section 7 to the Pennsylvania Constitution, and Section 20, guarantee freedom of expression and related rights including freedom of assembly and the right to petition the government for redress of grievances.

422. The 14th Amendment to the Federal Constitution guarantees due process of law, as does Article I, Section 1 of the Pennsylvania Constitution.

423. Section 1122 lists the grounds on which a teacher in Pennsylvania can be terminated:

Section 1122. Causes for Termination of Contract.--(a) The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be . . . advocacy of or participating in un-American or subversive doctrines

24 Pa. CS § 11-1122.

424. Defendants made a public press release on January 7, 2021, falsely informing the public that a teacher—reasonably identifiable as, and in fact identified as, Jason Moorehead—was being suspended indefinitely for participating in the January 6, 2021 Capitol Building riot.

425. On January 8, 2021, Defendants’ solicitor in fact told the Allentown Morning Call that Plaintiff was suspended for participating in un-American and subversive doctrines, one of the grounds for termination of a tenured teacher enumerated in section 1122.

426. The story contains comments from Defendants, stating:

“The district is taking the matter seriously and has started the process of investigating the extent of the teacher’s involvement [in the Capitol Building riot], district solicitor John E. Freund III said.”

Exhibit 4.

427. Defendants, by and through the District Solicitor, were also quoted as saying:

“The district has to balance the employee’s right to free speech and association, against teachers’ duty not to participate in or advocate un-American or subversive doctrines” he said, referencing the Pennsylvania public school code.

Id.

428. The solicitor reiterated that this was the basis for Plaintiff’s discipline to Plaintiff’s counsel on February 8, 2021. Exhibit 15.

429. Since Brandenburg v. Ohio, Tinker v. Des Moines, Texas v. Johnson, and U.S. v. Eichman, laws purporting to prohibit un-American or subversive speech or conduct have been struck down as unconstitutionally prohibiting speech and related constitutional rights.

430. Such laws are only valid to the extent they are narrowly tailored to forbid unprotected speech, namely imminent incitement to illegal activity, and are otherwise void for overbreadth and vagueness.

431. Section 1122 is not narrowly tailored and in fact broadly prohibits vast swaths of permissible speech and activities protected by the US and Pennsylvania constitutions.

432. Plaintiff also did not engaged in imminent incitement to illegal activity.

433. Defendants, acting under color of state law, have disciplined, suspended, constructively terminated, terminated, defamed, violated his First Amendment rights, and violated his 14th Amendment Rights in reliance on Section 1122.

434. Because of Defendants' actions, Plaintiff has suffered, and continues to suffer, irreparable injury which cannot be fully compensated by an award of money damages.

435. Plaintiff asks that section 1122 of the Pennsylvania School Code be declared in violation of the First and Fourteenth Amendments to the US Constitution, and Article 1 sections 7 and 20 of the Pennsylvania Constitution, for (1) permitting viewpoint discrimination, and (2) for being overbroad and vague.

436. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to a preliminary and permanent injunction invalidating and restraining enforcement of section 1122. Additionally, Plaintiff is entitled to damages in an amount to be determined by the Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

COUNT IV - PROCEDURAL DUE PROCESS

Jason Moorehead

v.

All Defendants

437. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

438. A plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of "life, liberty, or property," and (2) the procedures available to him did not provide "due process of law." Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000). An essential principle of due process is that a "deprivation of life, liberty, or property `be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" Loudermill, 470 U.S. at 542, 105 S.Ct. at 1493 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656-57, 94 L.Ed. 865 (1950)). Due process fundamentally requires that the individual be given an opportunity for a hearing before he is deprived of his property interest. Id.

439. Plaintiff Jason Moorehead alleges due process violations of three distinct types:

- a. Property based pre-deprivation and post-deprivation due process claims, because he was suspended without notice depriving him of his right to continue in his employment, then terminated for a pretextual reason in an unfair and biased board hearing;
- b. A stigma plus liberty due process claim;
- c. A reputation plus liberty due process claim

440. Note that certain government actions are barred regardless of the fairness of the procedures used to implement them, which serves to prevent governmental power from being "used for purposes of oppression," Murray's Lessee [474 U.S. 327, 332] v. Hoboken Land &

Improvement Co., 18 How. 272, 277 (1856) (discussing Due Process Clause of Fifth Amendment).

441. Plaintiff wants to be absolutely clear that Defendants had no basis upon which to take and/or continue any adverse action against him, and that even if he had been given the fairest of process it could not legitimize what Defendants have done.

442. However, the conduct of Defendants during this so-called process was so deficient that it must be subject to court review and sanction as a matter of public record.

a. Due Process Claim for Property Interest in Continued Employment

443. Plaintiff had a clear and indisputable property interest in his continuing employment.

444. "To have a property interest in a job . . . a person must have more than a unilateral expectation of continued employment; rather, she must have a legitimate entitlement to such continued employment." Elmore v. Cleary, 399 F.3d 279, 282 (3d Cir.2005) (citing Bd. of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972)). Whether a person has a legitimate entitlement to — and hence a property interest in — his government job is a question answered by state law. Id.

445. Under Pennsylvania law, Plaintiff was a 18-year employee of Defendants, as well as a tenured teacher. The Pennsylvania School Code provides that teachers can only be dismissed for just cause, see § 1122, *and* the Collective Bargaining Agreement further states that tenured teachers such as Plaintiff *cannot be disciplined without just cause.*

446. He therefore has a property interest in continuing employment and not being disciplined without just cause in accordance with the Due Process protections in the U.S. Constitution as expressed by the U.S. Supreme Court.

447. In addition, where a suspension is done with intent to terminate, it is viewed as a de facto termination and constitutes a deprivation to which due process protections attach. See Gniotek v. City of Philadelphia, 808 F. 2d 241, 243-44 (3d Cir. 1986) (stating that suspensions with intent to terminate are *de facto* dismissals and due process protections attach). The same is alleged where the defendant employer has in effect worked a constructive termination upon the employee by creating a hostile and unsafe work environment and/or acted in such a manner as to break the employment relationship beyond repair.

448. Only a strong government interest can justify the pre-hearing deprivation of a property right, usually related to public safety concerns, which are not implicated by this case. Dee v. Borough of Dunmore, 549 F.3d 225 (3d Cir. 2008); Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011) (stating that where employee can only be dismissed for cause, the plaintiff has a property interest in not being suspended without cause).

449. Even if immediate suspension is warranted, then prompt post-suspension process critical to protect employee rights.

450. The following actions were taken by the district without notice or an opportunity to be heard, in violation of the School Code and due process protections under the Fourteenth Amendment.

- a. Pre-Deprivation Denial of Due Process - Indefinite suspension with pay without Loudermill notice or hearing on January 7, 2021, with intent to terminate
 - i. Jason Moorehead was indefinitely suspended on January 7, 2021, without notice despite no prior history of discipline. This suspension was done with intent to terminate.
 - ii. The District Solicitor told the Morning Call on January 8, 2021, that Plaintiff had been suspended because he had participated in un-American and subversive doctrines. This was an explicit and express reference to Section 1122 of the School Code, the section identifying

the exclusive reasons to terminate a teacher, which lists one ground for termination as “advocation of or participating in un-American or subversive doctrines.”⁴

- iii. The suspension was also obviously done with intent to terminate because the District put out public statements telling the public Plaintiff had rioted at the Capitol Building and was therefore being suspended indefinitely.
- iv. Note that Defendants’ defamatory statements were so damaging, and such a betrayal of Moorehead, that the employment relationship was irrevocably broken when they were made, all without him being afforded any due process.
- v. Plaintiff had a property right is not being suspended without Loudermill Notice and opportunity to respond, a property right in not being suspended with intent to terminate without a Loudermill Notice or an opportunity to respond, and property right in not being constructively terminated as of January 7, 2021. See Gniotek, 808 F. 2d at 243-44 (stating that suspensions with intent to terminate are *de facto* dismissals and due process protections attach). The defamatory public statements about Plaintiff’s suspension also caused due process protections to attach, and required pre-statement notice and an opportunity to respond. Indeed, the CBA prohibited any public criticism of Moorehead by Defendants, and state tort law prohibits defamation.
- vi. Only a strong government interest in very limited circumstances can justify the pre-hearing deprivation of a property right, usually related to public safety concerns, which are not implicated by this case. See Dee v. Borough of Dunmore, 549 F.3d 225 (3d Cir. 2008); Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011) (stating that where employee can only be dismissed for cause, the plaintiff has a property interest in not being suspended without cause).
- vii. Here, there was no valid justification to immediately suspend Plaintiff without any notice or hearing, especially with intent to terminate, nor to constructively terminate Plaintiff by egregiously defaming him. Note that the entire point of Loudermill—to give the employee notice and the opportunity response—is to prevent exactly what happened in this case before any irrevocable action takes place.
- viii. Where a pre-deprivation due process violation has occurred for failure

⁴ This given reason is unconstitutional, as alleged and explained in Cause of Action III. The solicitor reiterated that this was the basis of the suspension on January 8, 2021, and February 8, 2021.

to provide Loudermill notice and hearing, a complete constitutional violation has already occurred, regardless of the adequacy of any post-deprivation process. Alvin v. Suzuki, 227 F.3d 107, 120 (3d Cir. 2000) (where no due process pre-deprivation “a complete constitutional violation has (allegedly) already occurred; if the Constitution requires pre-termination procedures, the most thorough and fair post-termination hearing cannot undo the failure to provide such procedures.”).

- ix. Here, Plaintiff’s pre-deprivation/suspension due process rights were violated when he was suspended with intent to terminate, publicly defamed around the nation with a factually false and unconstitutional reason for his suspension, and constructively terminated all without Loudermill notice or opportunity to be heard.
- b. The Pretextual Loudermill Notice and Sham Reinstatement Violated Due Process
- i. Following Plaintiff’s immediate suspension with intent to terminate for a false and unconstitutional reason “advocation and participation in un-American and subversive doctrines” (which they publicly blasted to the entire nation), it was impossible for Plaintiff to return, the employment relationship was broken, and he had been constructively terminated.
 - ii. However, even hypothetically setting aside the constructive termination on January 7, 2021, what happened after the suspension egregiously violated due process.
 - iii. Having ascertained that the reason for suspension was false, the correct course of action would have been to publicly correct the record and unsuspend Plaintiff. Defendants did not do this. Instead Defendants waited three months, before issuing a fake Loudermill notice in April 2021.
 - iv. This so-called Loudermill notice said nothing about participating in “un-American and subversive” doctrines, the initial given reason for the suspension, and instead pretended as if the suspension was about social media posts and the manner in which he had requested off from work. Note that Defendants’ outrageous attacks on Plaintiff at the February 11, 2021, board meeting made it quite clear the real basis for their persecution.
 - v. Indeed, Plaintiff’s counsel was told by the Solicitor that if the devices he turned over were clean (and they were), the defamation would be corrected and he would be cleared. Plaintiff’s counsel objected in a letter to the Solicitor.

- vi. Setting aside that the posts are protected speech, nothing about the posts nor how he requested off work could have justified what was at that time a 3-month suspension. Essentially, Defendants were changing the rules and bases for the suspension as they went, trying to avoid admitting they did anything wrong without correcting the defamation.
- vii. A hearing was held on May 5, 2021, which Plaintiff objected to and refused to participate in.
- viii. On July 16, 2021, Defendants privately admitted in a letter to Plaintiff that he had not attacked the Capitol Building. They knew or should have known this fact since January 7, 2021. Despite this admission, they did not publicly correct the record.
- ix. Defendants' letter then stated that Plaintiff would be reinstated. However, this reinstatement was conditioned on Plaintiff taking classes on African American and Latino cultural competency. This requirement was utterly baseless and completely unconnected to anything that had occurred. The letter also disclosed that he would not be returning to Raub Middle School, and that the District had not identified any new position for him.
- x. This was a sham reinstatement for three reasons: (1) Defendants knew that the employment relationship was broken and a hostile/unsafe work environment existed which prevented reinstatement (especially given that the defamation was uncorrected), (2) the baseless requirement that he take cultural competency classes was a nonstarter Defendants knew he would not agree to,⁵ and (3) no position was even identified for reinstatement, because it would be impossible to reinstate him to a teaching position.
- xi. The simple fact of the matter is that after January 7-8, 2021, and the vitriol directed at Plaintiff on February 11, 2021, Defendants never had any intention of bringing Plaintiff back. Everything done after those points was designed by Defendant to avoid admitting any wrongdoing, avoid correcting the defamation, and making sure Moorehead did not return.
- xii. The use of a fake Loudermill process and reinstatement violated Plaintiff's due process rights.

⁵ This requirement shows the political motivations behind the discipline against Plaintiff.

- c. The Extreme Delay in the Illegal Process by Defendants up to July 16, 2021, Violated Plaintiff's Due Process Rights
- i. Even if Defendants' immediate suspension with intent to terminate Plaintiff for a false and unconstitutional reason (which they publicly blasted to the entire nation) was somehow proper they had a duty to promptly provide him due process thereafter. See Barry, 443 U.S. at 66 (stating that if immediate suspension is justified "the [employee's] interest in a speedy resolution of the controversy becomes paramount, it seems to us."). Having suspended him it was incumbent upon them to promptly provide him due process, including a Loudermill notice and hearing.
 - ii. Defendants should have known that Moorehead was not at the Capitol Building on January 7, 2021, and definitively knew he was not there on January 8, 2021.
 - iii. Despite that knowledge, they failed to correct their defamatory public statements, in fact doubled down and amplified these defamatory statements at the February 11, 2021 board hearing, and failed at any point to notify the public that the given reason for his suspension with intent to terminate—"participation in un-American and subversive doctrines"—was false.
 - iv. At various points Defendants claimed that an investigation was ongoing. This was a false and pretextual excuse to delay and figure out how to cover up their failures and terminate Moorehead. The District knew what happened almost immediately and had no evidence to suggest otherwise. Consider also that if an investigation was actually needed, then why did Defendants not wait for an investigation before defaming Moorehead on January 7 and 8 and February 11, 2021? Why were the results of this so-called investigation never communicated to the public?
 - v. Defendants did not even provide a Loudermill notice until April 9, 2021, three months after he was suspended. This was an outrageous and prejudicial delay. The public believed he had rioted at the Capitol Building because of Defendants' statements and his suspension; by delaying, Defendants made that harm permanent (indeed, it has never been corrected).
 - vi. As noted elsewhere, the notice itself cited pretextual reasons for his discipline, such as the social media posts, and was entirely objectionable and violative of due process. Defendants were attempting to pretend away the reason they had suspended him indefinitely in the first place: rioting at the Capitol Building. They knew this basis was false and were thus required to unsuspend him. Instead, they tried to

- find other reasons to justify his suspension.
- vii. Ultimately, Defendants purported to reinstate Moorehead on July 16, 2021, privately admitted he had not rioted at the Capitol Building. As noted elsewhere, this was a fake reinstatement. However, it should be noted that even Defendants now admitted that Moorehead had done nothing that warranted his suspension or termination.
 - viii. Note that prompt due process is most important where irrevocable harm will occur if quick action is not taken. Barry, *supra*. For instance, where a suspension will be served by the time the Loudermill process is finished is an instance where prompt process is necessary. Necessarily, where Defendants have promulgated a false reason for an employee's suspension, which is destroying his reputation and career, a prompt process is also necessary.
 - ix. Defendants claimed to be doing an investigation, but in reality they were attempting to delay to figure out how to get rid of Plaintiff without having to publicly admit they defamed him.
 - x. All told, until Defendants' fake reinstatement, it was over six months of unjust and baseless suspension.
- d. Plaintiff's Termination for "Willful Neglect of Duties" was a Pretextual Sham which Violated His Due Process Rights
- i. After Plaintiff objected to the sham reinstatement, and made it clear that there was no way he could return to ASD, Defendants moved to terminate him.
 - ii. Without warning or notice, while he was suspended, they cut his pay on September 1, 2021, effectively suspending him without pay. This alone was a pre-termination due process violation as he was required to be given Loudermill notice and hearing prior to being suspended without pay. Alvin, 227 F.3d at 120. This also shows that the termination decision was predetermined.
 - iii. A Loudermill notice was eventually sent on September 9, 2021, which claimed that he had failed to show up to work after allegedly being reinstated. As noted, reinstatement was impossible given the uncorrected defamation, and the requirement that Plaintiff take diversity classes as if he had done something wrong was unacceptable.
 - iv. At a September 22, 2021 Loudermill hearing Plaintiff objected to the predetermined nature of the charge, the obviously pretextual nature of the charge, the failure to correct the defamation, and the impossibility of Plaintiff's return given the broken employment relationship and hostile/unsafe work environment. Plaintiff had been telling Defendant

for over 1 year that it was impossible for him to return.

- v. Plaintiff was thereafter notified that he was being terminated allegedly for failing to show up to work.
- vi. Under the School Code Plaintiff could choose to do an administrative grievance arbitration, or choose a board hearing that is fair, unbiased, and impartial. See Pa. School Code § 1129; 1133. As reinstatement is impossible, pursuing a grievance arbitration the termination makes no sense. Therefore, a board hearing took place.
- vii. This post-termination process was pretextual, predetermined, and a sham for the reasons described in this complaint.
- viii. The Board and its members are also biased and not impartial, including because of their participation in and ratification of the discipline against him, their participation and ratification of the retaliation against him, because they had been sued, and because of their political animus for Plaintiff. This is in violation of not only the School Code, but also the US constitution.
- ix. The hearing officer(s) is also biased and not impartial because although he styled himself a “hearing officer,” he is in reality the Board’s own attorney and has professional and financial duties to protect their interests.
- x. The board hearing process was unfair for the reasons enumerated in this complaint, including that relevant defenses and arguments were disregarded and relevant evidence and witnesses were prohibited.
- xi. It was also a violation of due process for the board to refuse to attend the board hearing, and instead have their own attorney sit in place of the board and issue the recommendation to terminate which they voted to accept 9-0.

451. Everything about Defendants’ actions evidence an improper retaliatory intent and lack of due process.

b. Plaintiff has a Stigma-Plus Due Process Claim against Defendants

452. A “stigma plus” claim occurs when the government imposes “a stigma or other disability that foreclose[s] [the plaintiff’s] freedom to take advantage of other employment opportunities.” O’Donnell, 148 F.3d at 1140 (quoting Roth, 408 U.S. at 573). The theory is, in

essence, that some government action might impose such a harsh taint that it interferes with an individual's "right to follow a chosen trade or profession." Cafeteria Restaurant Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895-96 (1961).

453. This implicates Plaintiff's liberty interest, as opposed to his property interests.

454. The government must impose so great a constraint on an individual's future employment opportunities that it "involve[s] a tangible change in status" — that is, it must amount to "an adjudication of status under law." Kartseva v. Department of State, 37 F.3d 1524, 1527 (D.C. Cir. 1994); O'Donnell, 148 F.3d at 1141 ("[A] plaintiff who . . . seeks to make out a claim of interference with the right to follow a chosen trade or profession that is based exclusively on reputational harm must show that the harm occurred in conjunction with, or flowed from, some tangible change in status."). The action must have a "broad effect of largely precluding [her] from pursuing her chosen career." Kartseva, 37 F.3d at 1528; GE Co. v. Jackson, 610 F.3d 110, 121 (D.C. Cir. 2010).

455. The stigma does not have to result from official speech, but can also result from the overall nature of the conduct by Defendants.

456. Here, Plaintiff was egregiously defamed on January 7, 2021, when Defendants told the public that a teacher—he was readily identifiable as the teacher, and was in fact so identified—had been involved in the Capitol Building protest and riot. This was defamatory as Plaintiff had never been within 1 mile of the Capitol Building and also had not taken part in any protest or riot at the Capitol Building. This press release effectively destroyed Plaintiff's reputation and career.

457. Defendants have rotely claimed since this all started that the fact the press release does not name him means they escape liability, and have resolutely ignored that he was

reasonably identifiable. However, in a memo submitted before the second day of testimony on December 6, 2021, the District inadvertently admitted that Moorehead was reasonably identifiable. Specifically, the District wrote that:

Of significant note, this posting by former Superintendent Thomas Parker did not identify Mr. Moorhead. Publication of his presence was the result solely of Mr. Moorhead's online actions and activities [on Jan. 6, 2021].

Exhibit 46; accord Exhibits 34, 39. Restated, Defendants have conclusively admitted that they knew that Moorehead was identifiable by the public as the subject of the defamatory press release.

458. Indeed, comments on the District's social media accounts on and after January 7, 2021, made it clear that Defendants knew that the public knew the identity of the teacher referenced in the press release. See, e.g., Exhibit 55.

459. On January 8, 2021, despite knowing that the accusation was untrue and that Moorehead was in fact being identified as the subject of the press release, Defendants gave comment to the Allentown Morning Call further falsely stating and/or implying that Moorehead had been at the Capitol Building and involved in the violence there, and defamatorily identified the basis of his suspension with intent to terminate as advocating and participating in un-American and subversive doctrines, which could only be understood by the reader as stating that Moorehead was present at and had participated in the Capitol Building riot.

460. Defendants' defamation *per se* of Plaintiff spread all over the nation and destroyed his reputation.

461. Defendants knew or should have known from January 7 onward, and did know from January 8 onward, that Plaintiff was not at the Capitol Building, had not rioted, and was at all times peaceful and law abiding.

462. Defendants, out of political animus for Plaintiff, refuse to this day to correct the defamatory comments made on January 7 and 8, 2021—even though they privately admitted to Jason Moorehead on July 16, 2021, in writing that they knew there was no truth to the accusations.

463. The defamation on January 7 and 8, 2021 was enough by itself to stigmatize and destroy Plaintiff's reputation and career, especially as it was published nationally and has never been corrected. However, Defendants also stigmatized and further harmed Plaintiff when the Defendant Board, especially defendants Conover and Harris, colluded with community groups to have individuals attack plaintiff before and during a February 11, 2021, board hearing with knowingly false lies including that Plaintiff was an insurrectionist, rioter, guilty of treason, terrorist, white supremacist, bigot, racist, and biased educator. Defendants' own attorney specifically cautioned the Defendant Board and its members that this was egregious defamation of Plaintiff, apparently unaware that the defamation had been organized by the Board and its members out of political animus.

464. Remember, the Board knew Moorehead was not at the Capitol Building, but nevertheless arranged, colluded, permitted, and ratified this further stigmatization and defamation of Plaintiff. None of this defamation has been corrected.

465. If Plaintiff applies for a job anywhere, he will have to disclose what happened, and it is also easily found on the internet. He is a pariah.

466. As a result of the concerted and deliberate effort by Defendants to stigmatize and discipline Plaintiff, Defendants have severely harmed and stigmatized Plaintiff and made it largely impossible to pursue Plaintiff's chosen career.

467. Plaintiff has suffered severe damage as a result, including loss of employment, loss

of wages, future employment, mental and emotional anguish, and loss of reputation.

468. Plaintiff also requests that his name and reputation be cleared by Defendants.

469. Plaintiff's repeatedly demanded from January 2021 to present that his name be cleared and specifically requested a name clearing hearing.

c. Plaintiff has a Reputation-Plus Due Process Claim Against Defendants

470. As opposed to a stigma plus claim, a reputation plus claim requires that Plaintiff show that he was defamed and be accompanied by some other plus, defined as a tangible loss. See Good v. City of Sunbury, 352 F. App'x 688, 691-92 (3d Cir. 2009) (listing "tangible" losses found to be valid by the courts as including "deprivation of the liberty to pursue a calling or occupation; an injury to plaintiff's reputation while in the exercise of her constitutional right to free speech; and a constructive discharge and consequent damage to plaintiff's ability to earn a living[]" (internal quotation marks and citations omitted))."); Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 797 (3d Cir. 2000) (stating that a "plus" exists where "exercise of [plaintiff's] First Amendment right of speech [used] to initiate [and continue] a baseless prosecution.").

471. The inquiry focuses on whether Plaintiff's reputation was injured "while in the exercise of a constitutional right." Merkle, 211 F.3d at 797.

472. This claim is only actionable when the employer has disseminated the reasons for the termination and the dissemination is defamatory.

473. **Defamation** - Here, as noted Plaintiff was defamed by Defendants on January 7, 8, and February 11, 2021, in a very public manner. None of these defamatory statements have been publicly corrected or retracted, even though Defendants have privately admitted they are false.

474. **The Plus** -The pluses in this case include, both independently and jointly,

a. He was repeatedly defamed by Defendants in retaliation for peacefully

exercising his First Amendment Rights to Assemble, Petition his Government, associate and affiliate, and engage in free speech.

- b. Violation of Constitutional rights guaranteeing free expression, assembly, and affiliation.
- c. He was maliciously prosecuted—both in the initiation and continuation without probable cause—for engaging in constitutionally protected conduct and speech, and Defendants then pretextually continued the prosecution even when they knew the given bases for the discipline were false
- d. the deprivation of ability to pursue his occupation due to egregious and public nature of the defamation,
- e. his constructive termination,
- f. violation of the CBA prohibition on public criticism of teachers,
- g. violation of his property interest in not being suspended without notice,
- h. the failure to afford him pre-deprivation and post-deprivation due process,
- i. reassigning him to a nonexistent position and baselessly requiring him to take diversity classes;
- j. failing to correct the hostile and unsafe work environment,
- k. pretextually terminating him for a false reason, and,
- l. violation of school policies guaranteeing free expression and affiliation.

475. The outrageous defamation of Plaintiff by Defendants for political reasons, which has never been corrected, is exactly the type of conduct that creates a quintessential Reputation Plus claim.

476. Plaintiff has suffered severe damage as a result as a result of the property, stigma, and reputation plus due process violations, including loss of employment, loss of wages, future employment, mental and emotional anguish, loss of reputation, and personal damages.

477. Plaintiff also requests that his name and reputation be cleared by the district.

478. In today's day and age, accusations of the sort that Defendants have made against Plaintiff are a stake through the heart of a public educator's career. Defendants knew this, and

acted deliberately to punish and retaliate against Plaintiff because of his politics.

479. As a result he has suffered severe economic, mental, emotional, and reputational damages.

480. The individual Defendants cannot claim qualified privilege because the rights at issue were clearly established at all relevant times.

481. Plaintiff also demands punitive damages against all Defendants for their outrageous and blatantly unconstitutional conduct which showed at a minimum reckless indifference to his rights.

**COUNT V - VIOLATIONS OF FOURTH, FIFTH, AND FOURTEENTH
AMENDMENTS TO THE US CONSTITUTION FOR COERCED
STATEMENTS AND UNREASONABLE SEARCH AND SEIZURE ON
BEHALF OF THE FBI**

Jason Moorehead

v.

All Defendants

482. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

Garrity Claim

483. Plaintiff was interviewed by Defendants on January 8, 2021, and asked a series of questions. Plaintiff was unaware that although Defendants were asking the questions, they were doing so on behalf of the Federal Bureau of Investigation and that he was a suspect and/or person of interest and/or a target in a criminal FBI investigation.

484. Plaintiff was never informed by his employer or the FBI of his constitutional right against self-incrimination, an egregious violation of the Fifth Amendment, nor that he should

have criminal defense counsel present even though he was effectively being interviewed as a suspect by the FBI.

485. Plaintiff was instead given a misleading Garrity notice immediately before the interview which did not disclose he actually was already under criminal investigation by the FBI, and that he was being interviewed by the FBI. Exhibit 3.

486. Garrity protects Plaintiff, a public employee, under the Fifth and Fourteenth Amendment against coerced statements.

487. Plaintiff thought he was sitting down with his school employer to clear up his whereabouts on January 6, 2021; he did not know his employer was secretly working with the FBI to target him.

488. Under Garrity, the questions should have been narrowly tailored to his official job duties; instead, they were far ranging, overbroad, and in hindsight part of a criminal inquiry, in violation of Garrity.

489. Under Garrity, none of these statements can be used in any criminal investigation or prosecution. It is alleged that Plaintiff's coerced statements in the January 8, 2021 meeting are being used to continue a baseless FBI investigation into Mr. Moorehead in violation of Garrity and his Fifth and Fourteenth Amendment Rights.

490. Note that it is not as if Defendants did the Garrity meeting, then later shared the protected statements with law enforcement, which would still be prohibited; they actually secretly acted on behalf of the FBI in the Garrity interview, a truly outrageous constitutional violation.

491. Plaintiff adamantly maintained at the meeting that he was always over 1 mile away from the Capitol Building.

Claim for Unreasonable Search and Seizure

492. There was never any evidence whatsoever that Mr. Moorehead was at the Capitol Building, and there was no reasonable suspicion or probable cause to suspect that he had been at the Capitol Building or committed any crimes.

493. In mid-to-late January 2021, Defendants requested his work laptop, Chrome book, and an iPad. The claimed purpose was that this was necessary to the school's investigation into his whereabouts. Again, the school had no reason to believe that Plaintiff was anywhere near the Capitol Building.

494. Plaintiff always asserted his right to privacy in the devices, and that the request for the devices was entirely pretextual:

As to the laptop, you did not request it for 14 days after the event occurred and 12 days after his inquisition. To ask for it so late in the game indicates that the District has nothing else on Mr. Moorehead and that investigation does not have any real basis and are attempting to justify this ex post facto

Exhibit 10 - January 28, 2021 Letter.

495. On February 3, 2021, Plaintiff's counsel stated by email and phone:

Pursuant to our phone conversation, please confirm in writing that there are no criminal allegations, concerns, or 5th amendment rights at play or at issue regarding Jason Moorehead.

....

Lastly, it should be understood that by providing these devices, Mr. Moorehead is in no way waiving any rights. He has done nothing wrong and there was no basis to suspend him, put out a press release about him, "suspend" or "reassign" him, or take any other action against him whatsoever. By requiring Mr. Moorehead to turn over his devices, the District is further abusing and violating his constitutional rights on a fishing expedition to manufacture a pretextual basis to dismiss him. There was no probable cause, reasonable suspicion, or any legally cognizable indicia that could allow you to prosecute him or search his work devices.

That said, because the District has threatened to punish Mr. Moorehead further if the devices are not turned over, we are doing so under protest and without waiver of any rights.

Exhibit 13 - February 3, 2021 Email

496. Also on February 3, 2021, the solicitor confirmed that “The district has no interest in pursuing criminal prosecution.” Exhibit 13. The solicitor did not mention that Plaintiff was under active FBI investigation and that the devices were being examined by the FBI.

497. On February 8, 2021, Freund additionally claimed that the District wanted to know if Plaintiff was visiting “extremist” websites. There was no basis for this given reason, and it was also unconstitutional.

498. After additional back and forth making it clear that Plaintiff was only acting under protest and that there was no basis for this request, the devices were turned over.

499. In other words, Defendants seized Plaintiff’s devices while secretly acting as an arm of the FBI, without disclosing that they were being searched by law enforcement for incriminating reasons.

500. Defendants even falsely assured Plaintiff’s counsel there was no criminal aspect to turning over these devices, so that Plaintiff’s counsel would turn over the devices. This was improper and the devices were turned over under false pretenses.

501. A § 1983 claim under the Fourth Amendment is proper against a governmental actor where: (1) there was a seizure, (2) the seizure was performed by a governmental actor, (3) the seizure must have been unreasonable, and (4) there must have been an injury as a result of the seizure.

502. **First**, Plaintiff’s three work devices were in fact seized.

503. **Second**, the seizure was done by Defendants who are governmental actors and

who were also secretly working on behalf of the FBI as part of a criminal investigation into Jason Moorehead.

504. **Third**, the seizure was manifestly unreasonable. See Graham v Connor, 490 US 386, 396 (1989) (stating that reasonableness involves “a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.”). There was no grounds whatsoever to believe that Jason Moorehead was at the Capitol Building on January 6, 2021, or had done anything illegal or untoward.

505. Furthermore, when Plaintiff’s counsel specifically asked for assurances there was no criminal aspect to this request, he was misled both in that he was told there was no criminal aspect and also that he was told a private company would be searching the devices. He was not told about FBI involvement. As noted, the devices were inveigled from him under false pretenses.

Damages

506. Plaintiff was directly and proximately caused harm by the unreasonable search and seizure in violation of his Fourth Amendment rights, and also the violation of Garrity and his Fifth and Fourteenth Amendment rights.

507. As a result of the unreasonable search and seizure of his devices, he suffered harm. Defendants claimed on July 16, 2021 reinstatement letter, that he had improperly visited political and other websites on his work devices. Not only was this unconstitutional viewpoint discrimination, as no other left wing employees have been subjected to such seizures for attending left wing rallies, it was used as a pretext to justify his six month suspension and try to force him to take cultural competency classes. It was also meant to be a disciplinary

strike/demerit against Plaintiff.

508. His use of devices was not the reason he was suspended and the search of the devices was occasioned by political malice on the part of Defendants, and as a pretext to attempt to provide cover for his unconstitutional suspension with intent to terminate.

509. Moreover, as a result of the seizure, Defendants used it as pretext to prolong and delay his suspension in violation of his Fourteenth Amendment Due Process Rights, to delay and refuse to correct the defamation put out about him, to intrude upon his seclusion out of animus for his political opinions, associations, and assembly in violation of the First Amendment.

510. Lastly, the FBI has stated that there is pending investigation into Jason Moorehead, but refuses to disclose the basis. On information and belief, it is alleged that any such continuing investigation is the product of the unreasonable and baseless search and seizure of Plaintiff's devices, and also the violation of Plaintiff's rights under Garrity and the Fifth and Fourteenth Amendments.

511. Plaintiff requests punitive damages against all Defendants for their outrageous subversion and violation of his Fourth, Fifth, and Fourteenth Amendment Constitutional rights, which was done at a minimum with reckless indifference to Plaintiff's rights.

COUNT VI - DECLARATORY AND EQUITABLE RELIEF - NAME-CLEARING HEARING

Jason Moorehead

v.

All Defendants

512. Plaintiff incorporates by reference and realleges the preceding paragraphs of this complaint.

513. Plaintiff hereby demands a name-clearing hearing.

514. Plaintiff has repeatedly demanded a name clearing since January 2021.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment in its favor and against Defendants, jointly and severally, on all counts and claims compensatory damages in an amount in excess of this court's jurisdictional limitations, thereby guaranteeing Plaintiff a jury trial, exclusive of interests and costs, and an award of punitive damages, as well as prejudgment interest, post judgment interest, delay damages, costs, and such other equitable relief as the Court deems necessary; and requests that this Court determine and declare that Plaintiff be awarded for all counts:

- a. A name-clearing hearing and public retraction and correction of defamatory statements;
- b. Compensatory damages, inclusive of any and all harm attributable to Defendants' actions or inaction, including loss of earnings, loss of career, reputational/stigma damage, personally, and professional;
- c. Mental and emotional pain and suffering;
- d. Punitive damages to punish the Defendants for their outrageous conduct, self-interest, and duplicitous behavior, reckless and callous indifference to Plaintiff's rights, and evil motives;
- e. Exemplary damages to set an example for others;
- f. Attorneys' fees, costs, and court costs under § 1988;
- g. interest;
- h. prejudgment interest;
- i. Delay damages;
- j. Other equitable relief that may be necessary to enforce Plaintiff's rights; and,
- k. Such other and further relief and/or equitable relief that this Court deems just and/or necessary.

Respectfully submitted,
FRANCIS ALEXANDER, LLC



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Law Firm / Lawyer for Plaintiff
/d/ August 22, 2022

JURY TRIAL DEMAND

Plaintiff hereby demands a 12-person jury trial.

Respectfully submitted,

FRANCIS ALEXANDER, LLC

/s/ Francis Malofiy

Francis Malofiy, Esquire

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Law Firm / Lawyer for Plaintiff

/d/ August 22, 2022

VERIFICATION

I, JASON MOOREHEAD, hereby verify that that the facts set forth herein are true and correct to the best of my knowledge, information, and belief. I further understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

/s/ 
JASON MOOREHEAD

/d/ 
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing COMPLAINT was filed with the Electronic Filing System on the following in accordance with the Rules of Civil Procedure:

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/d/ August 22, 2022

EXHIBIT LIST

MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.

1. Jan. 7, 2021 Defamatory Press Statement
2. Jan. 7, 2021 Email from HR Exec. Director
3. Jan. 8, 2021 Garrity Notice
4. Jan. 8, 2021 Morning Call Article
5. Jan. 21, 2021 Letter from Francis Alexander
6. Jan. 23, 2021 Death Threat Email
7. Jan. 25, 2021 Letter from John Freund III
8. Jan. 26, 2021 Letter from Francis Alexander
9. Jan. 27, 2021 Letter from John Freund III
10. Jan. 28, 2021 Letter from Francis Alexander
11. Jan. 28, 2021 Freund Email Regarding Devices
12. Feb. 1, 2021 Freund Email Regarding Devices
13. Feb. 3, 2021 Exchange Regarding Devices
14. Feb. 5-7, 2021 Exchange Regarding Devices
15. Feb. 8, 2021 Email Exchange About Charges
16. Promise Neighborhoods Petition and Docs
17. March 31, 2021 Email Exchange
18. April 1, 2021 Letter from Francis Alexander
19. April 9, 2021 Email with Loudermill Notice
20. April 13, 2021 Email from Francis Alexander
21. May 4 & 25, 2021 Emails, with CBA Excerpt
22. July 16, 2021 Reinstatement Letter
23. July 30, 2021 Letter Response to Reinstatement
24. August 9, 2021 Letter from Anthony Pidgeon
25. August 16, 2021 Response by Jason Moorehead
26. Emails Sending Writ of Summons
27. Sept. 14, 2021 Loudermill Notice
28. Sept. 16, 2021 Email from Francis Alexander
29. Sept. 22, 2021 ASD Loudermill Exhibits
30. Sept. 22, 2021 Exhibit List and Timeline
31. Sept. 22, 2021 Loudermill Transcript
32. October 12, 2021 Statement of Charges
33. Sultanik Appointment as Hearing Officer
34. Nov 10 and 18, 2021 ASD Pre-Hearing Memos
35. Nov. 18, 2021 Moorehead Pre-Hearing Memo
36. All Sultanik Pre-Hearing Memorandums
37. Nov. 18, 2021 Plaintiff Subpoena Request
38. Nov. 19, 2021 Sultanik Email Response
39. Nov. 19, 2021 District Objection to Subpoenas
40. Nov. 19, 2021 Response by Francis Alexander
41. Nov. 19, 2021 Sultanik Response on Memos
42. Nov. 22, 2021 Moorehead Memo on Bias
43. Nov. 22, 2021 Hearing Transcript
44. Dec. 1, 2021 Privilege Log for Secret HR File
45. Dec. 3, 2021 Email from Francis Alexander
46. Dec. 6, 2021 District Obj. to Subpoenas
47. Dec. 7, 2021 Emails with Feb. 11, 2021 Docs
48. Dec. 13, 2021 Email from Francis Alexander
49. Dec. 14, 2021 Hearing Transcript
50. March 16, 2022 Hearing Transcript
51. May 26, 2022 District Summation Brief
52. June 2, 2022 Moorehead Post-Hearing brief
53. Feb. 24, 2022 Haaz Appointment
54. July 7, 2022 Hearing Officer Opinion
55. Raub Middle School Facebook Post
56. Moorehead Social Media Posts

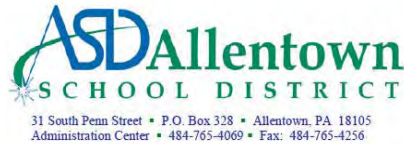
EXHIBIT 1

SUPERINTENDENT'S MESSAGE: STAFF INVOLVEMENT IN JANUARY 6 PROTESTS

Superintendent:
Thomas Parker

- Statement on behalf of the Allentown School District: Luiz D. Garcia who was elected as Trustee-at-Large for Lehigh Carbon Community College.
- A Message from Superintendent Parker: George Floyd
- Superintendent's Message: 2020-21 FY Proposed Final Budget
- A message from Superintendent Parker: ASD Board Votes to Renew Contract between District & Building 21, Inc.
- Superintendent's Message: Middle School Transformation
- Superintendent's Message: DonorsChoose Partnership
- Superintendent's Message: Governor Wolf visits ASD regarding charter school reform
- Archived Superintendent Messages
- Superintendent's Message: Allentown School District Announces Findings of Curriculum Audit
- ASD to Continue Remote Learning through Q2
- Superintendent's Message: Staff Involvement in January 6 Protests

[Allentown School District / Our District / Superintendent: Thomas Parker / Superintendent's Message: Staff Involvement in January 6 Protests](#)



Thomas E. Parker
Office of the Superintendent

January 7, 2021

Dear Allentown Families, Staff & Community:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.

We understand that many members of our community are upset by the image. At the same time, the district has an obligation to respect the First Amendment rights of our staff and students.

Because of the emotion and controversy stirred by the events of January 6, 2021, the teacher has been temporarily relieved of his teaching duties until the School District can complete a formal investigation of his involvement.

The chaos that took place in the nation's capital yesterday was deeply troubling and acknowledge that these actions have caused immense pain in our community. It occurred at a time when we are already grappling with the impacts of a global pandemic that has affected the health and livelihood of families throughout our community. Yesterday's events have added to the confusion and uncertainty our students are experiencing during this unprecedented time.

To that end, we are reminding our staff to think carefully about what they share online and how it could affect their students and fellow community members. While we all have the right to express ourselves, it is important to do so respectfully. We ask the same of our students and families.

We will continue to work to address the academic, social, and emotional needs of our students during this challenging time. Thank you for your support in creating a safe, equitable, and inclusive environment for students to raise questions and develop a diversity of perspectives about our community, our nation, and the world in which we live.

Please know that our educators, counselors, and administrators are here to support your student. Contact your child's school or reach out to district staff using the [Let's Talk](#) feature of our website if you have additional concerns.

Sincerely,

Mr. Thomas Parker, Superintendent

Allentown School District

Queridas familias, personal y comunidad de Allentown:

El 7 de enero de 2021, el Distrito Escolar de Allentown (ASD) tuvo conocimiento de la participación de un miembro del personal en la protesta del colegio electoral que tuvo lugar en las instalaciones del Capitolio de Estados Unidos el 6 de enero de 2021.

Entendemos que muchos miembros de nuestra comunidad están molestos por lo sucedido. Al mismo tiempo, el distrito tiene la obligación de respetar los derechos de la Primera Enmienda de nuestro personal y estudiantes.

Debido a la emoción y la controversia suscitada por los acontecimientos del 6 de enero de 2021, el maestro ha sido relevado temporalmente de sus funciones de enseñanza hasta que el Distrito Escolar pueda llevar a cabo una investigación formal de su participación.

El caos que tuvo lugar ayer en la capital de la nación produjo una profunda consternación y reconocemos que estas acciones han causado un inmenso dolor en nuestra comunidad. Se produjo en un momento en que nos enfrentamos a los efectos de una pandemia mundial que ha afectado la salud y el sustento de las familias de toda nuestra comunidad. Los acontecimientos de ayer han aumentado la confusión y la incertidumbre que nuestros estudiantes sufren en este momento sin precedentes.

En este sentido, le recordamos a los miembros de nuestro personal que piensen detenidamente en lo que comparten en línea y en cómo podría afectar a sus estudiantes y a los miembros de la comunidad. Aunque todos tenemos derecho a expresarnos, es importante hacerlo con respeto. Les pedimos lo mismo a nuestros estudiantes y familias.

Seguiremos trabajando para atender las necesidades académicas, sociales y emocionales de nuestros estudiantes durante esta época difícil. Gracias por su apoyo para crear un ambiente seguro, equitativo e inclusivo para que los estudiantes planteen preguntas y desarrollen una diversidad de perspectivas sobre nuestra comunidad, nuestra nación y el mundo en el que vivimos.

Por favor, tengan la certeza de que nuestros educadores, orientadores y administradores están dispuestos a apoyar a los estudiantes. Comuníquese con la escuela de su hijo o con el personal del distrito a través de la función [Hablemos \(Let's Talk\)](#) de nuestro sitio web si tiene otras inquietudes.

Atentamente,

Sr. Thomas Parker, superintendente

Distrito Escolar de Allentown

31 S. Penn Street, Allentown, PA 18102 | Phone 484-765-4000

ALLENTOWN
School District



Website by [SchoolMessenger Presence](#). © 2021 Intrado Corporation. All rights reserved.

EXHIBIT 2

From: Pidgeon, Anthony
Sent: Thursday, January 7, 2021 11:47 AM
To: Moorehead, Jason
Cc: mark@allentownea.org; John Freund
Subject: Capitol Incident

Dear Mr. Moorehead,

This will confirm my earlier direction to you that based upon certain social media posting that raise serious concerns about your involvement in the civil unrest that occurred at the United States Capitol Building yesterday and the substantial disruption that has already occurred in by the public in reaction to those postings, you are hereby assigned to home with pay and benefits pending further investigation of your involvement. While your assignment to home remains you are relieved of your teaching duties and you are directed to have no contact with students, or staff members outside of union representation. In the meantime, if you have not already done so you are strongly advised to take down any posting you have placed on social media.

We will be in contact with you in the near future.

Anthony Pidgeon
Executive Director of Human Resources
Allentown School District

EXHIBIT 3

GARRITY NOTICE
STATEMENT OF RIGHTS

You are hereby ordered to fully cooperate with the investigating official(s). Your failure to cooperate will create an objective and subjective fear of termination. You have the following rights and responsibilities during this investigation:

You have the right to be informed of the allegations involved.

You will be asked questions specifically directed and narrowly related to the performance of your official duties.

Statements made during any interviews may be used as evidence of misconduct or as the basis for seeking disciplinary action against you.

Any statements made by you during these interviews cannot be used against you in any subsequent criminal proceeding, nor can the fruits of any of your statements be used against you in any subsequent criminal proceeding.

If you so request, a person of your choice may be present to serve as a witness during the interviews.

If you refuse to answer questions relating to the performance of your official duties, you will be subject to dismissal.

ACKNOWLEDGEMENT: I have read and understand the above notification.


Employee's Signature: _____ Employee's Printed Name: Jason Moorehead	DATE: 1/8/2021	TIME:
Investigator's Signature: _____  Investigator's Printed Name: John E. Freund, III.	DATE: 1/8/2021	TIME:

EXHIBIT 4

'My reputation and character have been destroyed': Allentown...



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LEHIGH VALLEY NEWS NEWS

Allentown School District removes teacher who took part in Washington, D.C., protest

By ANDREW SCOTT THE MORNING CALL | JAN 08, 2021 AT 5:45 PM



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AP THE ASSOCIATED PRESS Present

On This Day: 27 January 2002

In 2002, Harry Potter was introduced to children in Beijing, at a special screening of "Harry Potter and the Philosopher's Stone." (Jan. 27) - Source: ASSOCIATED PRESS

...when they were invite of the first movie in the "Harry Potter and the

▶ Play Video

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- On This Day: 27 January 2002 Arts and entertainment | 1:42
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- Thousands of houses decorated for Mardi Gras General news | 0:49
- Today in History for January 27th General news | 1:30
- Campaign launches for tough immigration bill fight General news | 2:21

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LATEST LEHIGH VALLEY NEWS

Man's Lego portrayal of this Lehigh Valley city demands viewers to envision a post-COVID renaissance 2h



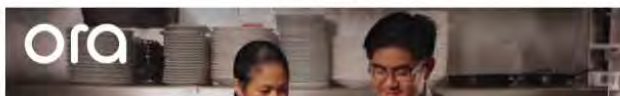
It takes a minute and can cost you \$1,000: Lehigh Valley seeing wave of catalytic converter thefts 7:30 AM



Allentown School District on Thursday temporarily relieved a teacher who took part in the [Electoral College protest that erupted into deadly violence](#) Wednesday in Washington, D.C., pending a formal investigation, the district said in a Thursday letter.

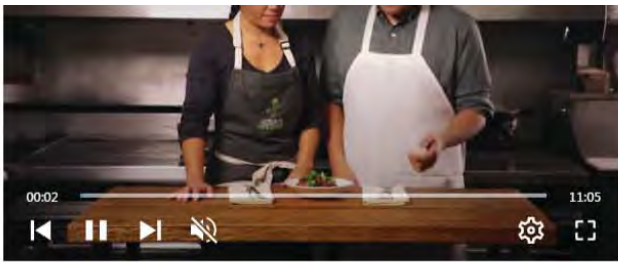
The letter from Superintendent Thomas Parker does not identify the teacher by name, where he works, or his extent of involvement in the protest.

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FEEDBACK

FEEDBACK



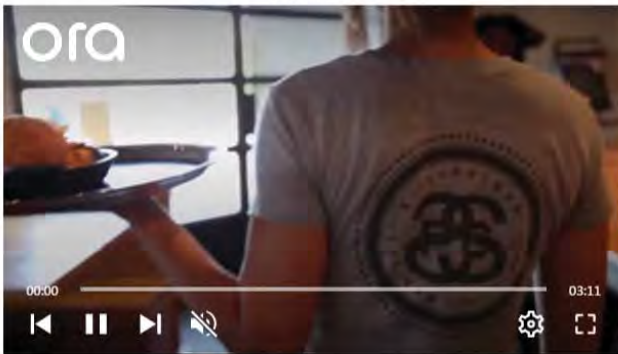
“We understand that many members of our community are upset by the image,” the letter states. “At the same time, the district has an obligation to respect the First Amendment rights of our staff and students.”

Parker did not elaborate on the nature of the image or where it was shared.

“Because of the emotion and controversy stirred by the events of January 6, 2021, the teacher has been temporarily relieved of his teaching duties until the school district can complete a formal investigation of his involvement,” the letter states.

It went on to tell staff “to think carefully about what they share online and how it could affect their students and fellow community members. While we all have the right to express ourselves, it is important to do so respectfully. We ask the same of our students and families,” the letter states.

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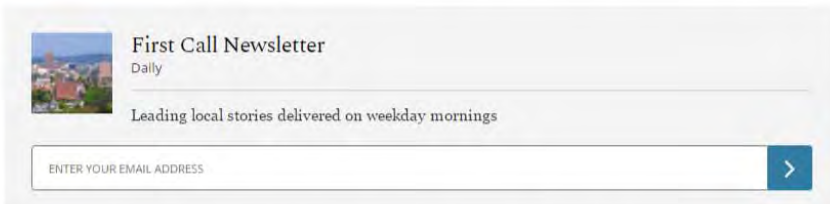
Parker and Allentown school board president Nancy Wilt declined to comment or identify the teacher, saying the district doesn’t release details on personnel matters.

The district is taking the matter seriously and has started the process of investigating the extent of the teacher’s involvement, district solicitor John E. Freund III said. Only after knowing all the facts can the district make a decision that balances First Amendment rights with the higher standards set for public school teachers, he said.

“The district has to balance the employee’s right to free speech and association, against teachers’ duty not to participate in or advocate un-American or subversive doctrines,” he said, referencing the [Pennsylvania public school code](#).

People posted their reactions on the Allentown School District’s Facebook page.

“I am appalled at this,” Kirsten Calabro said. “There is no proof this man did anything wrong! He was there to support his political views. How dare we as a district dictate how our teachers are supposed to think.”



Marjan May said, “I understand the free speech argument, but I was also taught in college

that public educators are (for better or worse) held to a higher standard than the average employed person. Perhaps he should find a job in a district that better suits his ... values.”

Four people died in Wednesday’s chaos as pro-Trump protesters laid siege to the U.S. Capitol in a bid to stop the certification of Joe Biden’s election as president. Three died of medical emergencies, and Air Force veteran Ashli Babbitt, 35, of San Diego, was fatally shot in the Capitol by police, Washington D.C. Metropolitan Police Chief Robert J. Contee said.

A fifth person – a police officer – died Thursday night. The U.S. Capitol Police said in a statement that Officer Brian D. Sicknick was injured “while physically engaging with protesters” during the Wednesday riot and later died of those injuries.

After the siege was quelled, legislators returned to the Capitol building and finished certifying Biden’s election, **demanding Vice President Mike Pence invoke the 25th Amendment** to declare Trump unfit and remove him from office.

Morning Call reporter Kayla Dwyer contributed to this article.

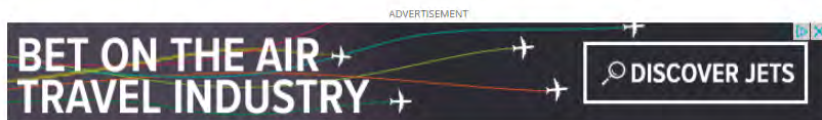
Morning Call reporter Andrew Scott can be reached at 610-820-6508 or ascott@mcall.com.

FEEDBACK

Andrew Scott
The Morning Call

CONTACT   

Andrew Scott covers evening breaking news for The Morning Call. He previously handled some of the municipal, school board and breaking news coverage for the Pocono Record in Monroe County, where he lives. He’s a Morris County, N.J., native, and William Paterson University graduate.



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EXHIBIT 5

From: [Francis Alexander Malofiy](mailto:Francis.Alexander.Malofiy)
To: Parkert@allentownsd.org; pidgeona@allentownsd.org; Wiltm@allentownsd.org; Millerni@allentownsd.org; Braces@allentownsd.org; Conoverl@allentownsd.org; Harrisph@allentownsd.org; Johnsonch@allentownsd.org; Mathisona@allentownsd.org; Thielc@allentownsd.org; Vegal@allentownsd.org; jef@kingspry.com
Cc: [Francis Alexander Malofiy](mailto:Francis.Alexander.Malofiy); [AJ Fluehr](mailto:AJ.Fluehr)
Subject: JASON MOOREHEAD v. ALLENTOWN SCHOOL DISTRICT - DEMAND LETTER (SERVED)
Date: Thursday, January 21, 2021 7:11:33 PM
Attachments: [2021.01.21 - MOOREHEAD v. ALLENTOWN ET AL - Demand Letter \(SERVED\).pdf](#)

Dear Allentown School District and Mr. Parker,

Please review the attached letter and provide careful consideration on how you wish to proceed.

This is a clear-cut violation of the First Amendment. It is hard to fathom how a public school board—guided and advised by counsel—would so clearly violate a teacher’s due process and constitutional rights, as well as defame him.

I look forward to your response.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com



FRANCIS ALEXANDER LLC

JANUARY 21, 2021

ALLENTOWN SCHOOL DISTRICT
31 S. Penn Street,
Allentown, PA 18102
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Unconstitutional First Amendment Retaliation and Abuses against Jason Moorehead

To the Allentown School District, Mr. Parker, and its Officials:

I represent Jason Moorehead who has been employed for the last 17 years with the Allentown School District as a social studies teacher and coach. He has dedicated his life to the school district and the children he teaches and has a spotless record.

He reached out to me because I handle high-profile First Amendment cases involving public school teachers and administrators. You are directed to cease and desist your current course of conduct suspending Mr. Moorehead and to reinstate him immediately.

Mr. Moorehead has a constitutional right to protest, petition his government for redress of grievances, and post related content on his personal social media. At all points he was *one mile away* from the Capitol on January 6, 2021, was law abiding, and you have not a shred of evidence to show otherwise.

The public reasons given for the District's suspension of him are nonsensical and defamatory. Contrary to the public statements posted by the District's Superintendent stating that Mr. Moorehead was at the U.S. Capitol, he never left the Washington Monument. Furthermore, a public employer cannot punish a teacher for posting a photo of himself lawfully protesting because of the emotional reactions of political opponents. The public statements made by the District's counsel on behalf of the district that my client is un-American and subversive, and can be punished on that basis, are not only false and defamatory but also legally erroneous. The statements by counsel ignore that current free speech protections arose from exactly those types of accusations. Critically, these accusations further demonstrate that the district punished him because they disagree with his viewpoint and affiliation, not for any legitimate reason; due to the District's many statements liability has *already been admitted*.

Moreover, your immediate suspension of and public attacks on Mr. Moorehead unequivocally violated his due process rights. You have exposed not only the Board, but also its members and administrators, to serious financial liability.

Unless Jason Moorehead is immediately reinstated with a clean record, and paid \$1,000,000 in damages for the hell you have put him and his family through, he has authorized me to seek the full extent of damages allowed by law, both compensatory and punitive in nature. This will be in the millions of dollars. He also demands a name clearing hearing, a full public apology, and annual civics lessons for all Allentown public school staff, board, and students to ensure that this never happens again. An independent, third-party investigation of civil rights abuses by the Board is also required; more victims will undoubtedly come forward.

You are hereby notified to preserve any and all data, information, documents, and communications regarding Jason Moorehead. My Firm will be handling this case moving forward and all future communications should come to my attention. Your response is requested in seven (7) days or we will move forward as we see fit. With every good wish, I am,

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

*Cc: Thomas Parker, Superintendent
Tony Pidgeon, HR Director
Nancy Wilt, Board President
Nicholas Miller, Board Vice-President
Sara J. Brace, Board Member
Lisa A. Conover, Board Member
Phoebe D. Harris, Board Member
Cheryl L. Johnson-Watts, Board Member
Audrey Mathison, Board Member
Charles F. Thiel, Board Member
Linda Vega, Board Member
John E. Freund III, Esquire*

EXHIBIT 6

-----Original Message-----

From: Howardw [mailto:h_a_weiss@yahoo.com]

Sent: Saturday, January 23, 2021 10:58 PM

To: Francis Alexander Malofiy <francis@francisalexander.com>

Subject: You fucking scum

You scum sucking cunt.....The PA Resistance has stated that moorehead will be sentenced to execution and found guilty soon.

He is a lying insurrectionist and they have said "he's a dead man!!!"

EXHIBIT 7



January 25, 2021

JEROME B. FRANK
DONALD F. SPRY II
KIRBY G. UPRIGHT, LLM, CPA
KENT H. HERMAN
JOHN E. FREUND, III
NICHOLAS NOEL, III
GLENN M. HAZELTINE*
ALAN S. BATTISTI
KEVIN C. REID*
PAUL S. FRANK
BRIAN J. TAYLOR**
MICHAEL A. GAUL
ELLEN C. SCHURDAK
KRISTINE RODDICK
REBECCA A. YOUNG
DOROTA GASIENICA-KOZAK
JODY A. MOONEY
JESSICA F. MOYER
SCOTT J. GAUGLER
MATTHEW T. TRANTER*
AVERY E. SMITH*
KARLEY BIGGS SEBIA*
JONATHAN M. HUERTA
TAISHA K. TOLLIVER-DURAN*
RYAN K. FIELDS*

VIA EMAIL CORRESPONDENCE, ONLY
FRANCIS@ FRANCISALEXANDER.COM

Francis Alexander Malofiy, Esquire
FRANCIS ALEXANDER LLC
280 North Providence Road, Suite 1
Media, PA 19063

Re: Allentown School District/Jason Moorehead

Dear Mr. Malofiy:

I am in receipt of your January 21, 2021 letter addressed to the Allentown School Board and the Allentown School District's ("District") Administration. Your client, Jason Moorehead, is currently assigned to home with full pay and benefits until the District concludes its investigation into the extent of Mr. Moorehead's involvement in the January 6, 2021 incident in Washington and subsequent social media postings. This is the same procedure employed for any employee whose conduct may be in violation of school policy. No charges have been brought against Mr. Moorehead.

The District is fully within its right, as well as its obligation, to investigate the conduct of one of its teachers who might be involved in conduct that could interfere with his role as an effective teacher. When the District's investigation is concluded, a recommendation will be made concerning his return to the classroom.

In that regard, a review of his District owned computer and laptop is being conducted as is the right of the District under the District's Acceptable Use Policy. Please instruct your client to promptly cooperate with the District's Human Resources Department in surrendering his District owned laptop for inspection. Your client's cooperation will aid in allowing the District to conclude its investigation without unnecessary delay.

To my knowledge, no one from the District has made any accusation that Mr. Moorehead has committed any terminable offense. No one from the District has even acknowledged his identity, although Mr. Moorehead himself made his involvement in the Washington event public knowledge. The District first became informed of his involvement upon receipt of a deluge of emails and calls from individuals who had seen Mr. Moorehead's photographs and postings on social media. The reaction fomented by your client's photographs and postings was formidable making temporary reassignment entirely justifiable.

OF COUNSEL:
E. DRUMMOND KING
DOMENIC P. SBROCCHI
TERENCE L. FAUL
JAMES J. RAVELLE, Ph.D., JD.
KATHLEEN CONN, Ph.D., JD., LLM
RICHARD J. SHIROFF

AFFILIATED WITH:
WEISS BURKARDT KRAMER, LLC
PITTSBURGH, PA 15219

*LICENSED IN PA AND NJ
**LICENSED IN PA AND NY

A temporary change in assignment from classroom duties, while the district investigates possible improper contact is standard procedure. Mr. Moorehead's temporary reassignment is no different.

Just as you admonished my clients to preserve and maintain any data, information, documents, or communications related to this incident, please deliver the same Litigation Hold notice to your client.

All further communications from your office should be addressed to my attention.

Very truly yours,

/s/ John E. Freund, III

JOHN E. FREUND, III
Solicitor – Allentown School District

JEF:jam

bcc: Ms. Nancy Wilt, President - Allentown School Board
Mr. Nicholas Miller, Vice-President – Allentown School Board
Ms. Phoebe Harris, Allentown School Board Member
Ms. Lisa Conover, Allentown School Board Member
Ms. Linda Vega, Allentown School Board Member
Ms. Cheryl Johnson-Watts, Allentown School Board Member
Mr. Charles Thiel, Allentown School Board Member
Ms. Audrey Mathison, Allentown School Board Member
Ms. Sara Jane Brace, Allentown School Board Member
Mr. Thomas Parker, Superintendent of the Allentown School District
Dr. Lucretia N. Brown, Deputy Superintendent of Equity, Accountability, &
School Improvement
Ms. Jennifer Ramos, Deputy Superintendent for Operations
Mr. Anthony Pidgeon, Executive Director of Human Resources

EXHIBIT 8



JANUARY 26, 2021

John E. Freund III, Esquire
KING, SPRY, HERMAN, FREUND & FAUL LLC
One West Broad Street | Suite 700
Bethlehem, PA 18018
T:(610) 332-0390
F:(610) 332-0314
E: jef@kingspry.com
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Failure to Correct Defamatory Statements and Constitutional Violations

Dear Mr. Freund,

I read your letter. It is pathetic. The appropriate response is to say “I’m sorry” and to correct the defamatory and false statement made about my client. Yet again, you have failed to do so.

Let’s be factually clear as to what occurred. On January 7th ASD and Mr. Parker blasted my client with a demonstrably false and defamatory statement, the first sentence which reads:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.

Then, on January 8, 2021, you subjected Mr. Moorehead to a 1984-style Orwellian inquisition—without notice of what he was being charged with—where he answered all of your questions. At that moment, you knew beyond any doubt that your press release was false and defamatory, as was your stated reason for suspending him. Yet, for over two weeks you and your client have done nothing to correct the record despite having a duty to immediately do so.

Your letter talks about the need for due diligence; however, there was no due diligence when you rushed-to-judgment as it took less than 1 day to condemn Mr. Moorehead, irreparably destroying a 17-year spotless career. You didn’t even have the decency to pick up the phone and ask his side of the story before you destroyed his life. Now ASD is desperately trying to ex post facto manufacture a pretextual reason why Mr. Moorhead can be disciplined; however, you have no facts whatsoever to support the ongoing witch hunt you are subjecting him to.

The glaring omission in your letter is your failure to address the false and defamatory statement. In the Covington defamation lawsuits, the courts ruled that the false allegations that Nicholas Sandmann moved *just 1 step* to block Nathan Phillips exit were defamatory. Here, your clients placed Mr. Moorehead *over 1 mile from where he was*, at the site of what has been called a violent insurrection. There is no legal or factual defense to this case or ASD’s actions—especially now that the District has refused to issue a correction.

The District's reckless conduct has been devastating for Mr. Moorehead, because he was readily identifiable by the viewing public. His name and picture spread all over the internet and social media and he was doxxed. This has led Mr. Moorehead and his family to receive threats of physical harm and death. He and his wife are terrified for their life and the wellbeing of their two minor children. As a result, a police report has been filed. If anything happens to Mr. Moorehead or his family, you are going to be responsible.

This disaster would not have happened if the District had simply followed due process. Your claim that it is standard procedure for the district to suspend employees before an investigation (and apparently defame them)—which is itself a due process violation—merely admits that the District routinely violates the law.

Because you have failed to correct the record, violated Mr. Moorehead's due process rights, and violated the Pa. and US Constitutions, we will be filing a lawsuit against ASD, Thomas Parker, and everyone involved. Sometimes school districts don't learn from their mistakes unless they pay for them.

If Mr. Moorhead was Black and attended a BLM protest would he have been treated the same way?

With every good wish, I am,

A red handwritten signature, appearing to be 'F. Malofiy', written in a cursive style.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

Encl: ASD Response to Jason Moorehead's Cease and Desist Letter

EXHIBIT 9

January 27, 2021

VIA EMAIL CORRESPONDENCE, ONLY
FRANCIS@FRANCISALEXANDER.COM

Francis Alexander Malofiy, Esquire
FRANCIS ALEXANDER LLC
280 North Providence Road, Suite 1
Media, PA 19063

Re: Allentown School District/Jason Moorehead

Dear Mr. Malofiy:

I read your rude and condescending response to my letter. Please save your vituperations for your TV appearances.

To date your client has not cooperated with the district's efforts to retrieve his district owned laptop. When we have had the opportunity to review Mr. Moorehead's district owned devices, we can move the investigation to a conclusion. Please have your client arrange to surrender his laptop to the HR Department no later than noon on Friday, January 29, 2021. If the school district does not receive the laptop, it will have to take legal means to retrieve it.

Your suggestion that the district is responsible for consequences to Mr. Moorehead is preposterous. Mr. Moorehead, and now with the apparent encouragement of his lawyer, has made his participation in the January 6th events a *cause célèbre*, which can only serve to raise the passions of an already divided public. Otherwise, his temporary reassignment would have been a relatively discrete employment issue.

Before you put all your eggs in the basket of the superintendent's letter about a protest at the Capitol, you should review your own client's posting where he hopes to have his presence described as a "mostly peaceful protest" while at the Capital [sic] The school district has made absolutely no statement as to what Mr. Moorehead's involvement was while he attended the "protest." (His words). The district did not release Mr. Moorehead's posts that depict his presence in Washington on January 6 — he did when he published his pictures and posts on the Internet. Moreover, the school district never released or acknowledged Mr. Moorehead by name.

JEROME B. FRANK
DONALD F. SPRY II
KIRBY G. UPRIGHT, LLM, CPA
KENT H. HERMAN
JOHN E. FREUND, III
NICHOLAS NOEL, III
GLENN M. HAZELTINE*
ALAN S. BATTISTI
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JONATHAN M. HUERTA
TAISHA K. TOLLIVER-DURAN*
RYAN K. FIELDS*

OF COUNSEL:
E. DRUMMOND KING
DOMENIC P. SBROCCHI
TERENCE L. FAUL
JAMES J. RAVELLE, Ph.D., JD.
KATHLEEN CONN, Ph.D., JD., LLM
RICHARD J. SHIROFF

AFFILIATED WITH:
WEISS BURKARDT KRAMER, LLC
PITTSBURGH, PA 15219

*LICENSED IN PA AND NJ
**LICENSED IN PA AND NY

As to the “1984” grilling, Mr. Moorehead was present with the president of his teachers’ association and was given a Garrity Notice before the interview, which was professional and cordial.

Finally, your suggestion comparing the January 6th events in Washington with a Black Lives Matter protest, is offensive and inappropriate.

It is my wish that our future correspondence can be more professional and respectful.

Very truly yours,

/s/ John E. Freund, III

JOHN E. FREUND, III
Solicitor – Allentown School District

JEF:MLC

bcc: Ms. Nancy Wilt, President - Allentown School Board
Mr. Nicholas Miller, Vice-President – Allentown School Board
Ms. Phoebe Harris, Allentown School Board Member
Ms. Lisa Conover, Allentown School Board Member
Ms. Linda Vega, Allentown School Board Member
Ms. Cheryl Johnson-Watts, Allentown School Board Member
Mr. Charles Thiel, Allentown School Board Member
Ms. Audrey Mathison, Allentown School Board Member
Ms. Sara Jane Brace, Allentown School Board Member
Mr. Thomas Parker, Superintendent of the Allentown School District
Dr. Lucretia N. Brown, Deputy Superintendent of Equity, Accountability, &
School Improvement
Ms. Jennifer Ramos, Deputy Superintendent for Operations
Mr. Anthony Pidgeon, Executive Director of Human Resources.

EXHIBIT 10



FRANCIS ALEXANDER LLC

JANUARY 28, 2021

John E. Freund III, Esquire
KING, SPRY, HERMAN, FREUND & FAUL LLC
One West Broad Street | Suite 700
Bethlehem, PA 18018
T: (610) 332-0390
F: (610) 332-0314
E: jef@kingspry.com
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
ASD Must Correct the False Statements Immediately

Dear Mr. Freund,

You are writing me letters about your "feelings" while I am forced to protect my client's safety. Mr. Moorehead has been harassed and has received multiple threats of physical harm and death because ASD issued a false and defamatory press release stating Mr. Moorehead was involved in the violent protests at the US Capitol Building—when he was not. My client has repeatedly told you—and you have been aware since January 8th—that he wasn't at the protest at the Capitol Building, yet you have refused to correct this lie for weeks.

There is a severe disconnect between the blasé and irresponsible manner with which you are handling this, and the harm being inflicted on Mr. Moorehead and his family because of your conduct. It is infuriating to Mr. Moorehead—a 17-year veteran teacher *with no disciplinary record*—that he be subjected to such intolerable treatment by his employer. Please recognize the horrible position he is in.

That said, I do not envy the task facing you with this case, defending the indefensible. I implore you to properly advise your clients that they cannot explain their way out of this one factually and you can do nothing legally as it pertains to liability. The die has been cast and forever my client's reputation has been destroyed.

Every day your client keeps the unambiguously defamatory press release on its website and social media accounts—and refuses to issue a correction—is more proof of malice. You have never provided any facts to establish that Mr. Moorehead was anywhere near the Capitol Building—and you never bothered to talk to him before blasting him in the press. Furthermore, after talking to him on Jan. 8, you never corrected the false press release. You have also never even explained why it is not being corrected.

Instead of addressing the false facts in your client's new release and their legal liability, you jump from non-issue to non-issue. For instance, as noted, you bizarrely focus on "feelings". At numerous points you claim that you feel that my letter is "rude," "condescending," "offensive," or "inappropriate." What I and Mr. Moorehead find objectively rude, offensive, condescending, and inappropriate—as well as legally actionable—is (1) your client putting out a press release without talking to Mr. Moorehead falsely claiming he was involved in a violent protest at the Capitol Building, (2) you, Mr. Freund, telling the press after the Jan. 8 inquisition that Mr. Moorehead had engaged in un-

American and subversive conduct (even though you knew he was at all times peaceful and not associated with the violence), and (3) the baffling refusal to issue a correction.

Contrary to your letter decrying that Mr. Moorehead has the temerity to fight back in the press against the District’s illegal actions, Mr. Moorehead has an absolute right to attempt to clear his name and legal duty to try to correct the widespread damage to his reputation. The implication that Mr. Moorehead has to sit quietly while his governmental employer libels him to his coworkers, community, and the nation is truly nonsensical. The fact that you are opposing his efforts to correct the record is not going to end well for your client.

Your letter further misses the point when it tries to redirect attention to my client’s social media posts. The January 7, 2021 press release was quite clear that Mr. Moorehead was being suspended because he was being investigated for being “involved in the electoral college protest that took place at the United States Capitol Building” and “emotions” surrounding what happened at the Capitol Building. It said absolutely nothing about social media posts. Now, after the fact, the District is trying to claim that it took the action it did because of his social media posts. This is risible and the District’s changing story does not pass the smell test.

Moreover, Mr. Moorehead’s personal social media posts are all Constitutionally protected political expression on matters of public concern, which in no way allow you to suspend him, investigate him, or continue this witch hunt. Your attempt to newly claim that the District was allowed to suspend him without notice because the District got some angry messages for a few hours from Mr. Moorehead political opponents is not a legal or factual argument that comes even close to passing constitutional muster.

“Emotions” and “controversy” do not mean that the District gets to toss aside the First and Fourteenth Amendments for its political opponents.

For the record, Mr. Moorehead’s reference to a “‘mostly peaceful protest’ while at the Capital” was a reference to him standing in line for a hot dog while in DC. This is common rhetoric used to mock CNN by individuals attending peaceful conservative events. It had nothing to do with anything at the *Capitol* Building which he was over 1 mile from. Your deceitful attempt to insert “[sic]” after “Capital” to falsely imply that Mr. Moorehead was referring to the differently spelled *Capitol* Building—instead of the nation’s *Capital* (Washington DC)—is plainly disingenuous. All objective evidence—including the photograph on that post—that never within 1 mile of the *Capitol* Building.

I’ve included the well-known graphic he was referencing in case you missed it over the summer:



That’s a real CNN graphic, by the way—and entirely emblematic of how extreme violence (riots, looting, 30 plus deaths, billions in damage) was excused for 6 months by the Left because it was viewed as “for a good cause.” Thomas Parker even endorsed the protests over the summer both at a Board

Meeting and in an Op-Ed—glaringly failing to condemn the rampant violence attendant to them. Parker’s conduct over the summer draws quite a contrast with his immediate, factually false, and politically motivated condemnation of my client.

Indeed, it is entirely valid for Mr. Moorehead to contrast the praise and excuses heaped upon the left wing BLM protests and riots by the left and media over the summer, with the treatment of conservative-linked events. In Mr. Moorehead’s case, he was condemned without notice based on the actions of others he had no association with.

It is further intellectually bankrupt, but revealing, for you to attempt to avoid answering the hard questions about your client’s conduct based on a hypothetical—asking whether a Black teacher who peacefully attended a BLM rally, but violence occurred one mile away, would have been treated the same way by Mr. Parker and the District. I, for one, stand up for the free speech rights of everyone regardless of political affiliation or viewpoint and believe that taking discipline against such a teacher would be unconscionable.

Your sole reaction to the hypothetical, labeling it as “offensive and inappropriate,” demonstrates that you have no actual response and that you and the District consider one to be good and one to be bad—you are discriminatorily and illegally differentiating *based on viewpoint*.

It is clear that your client is coming after Mr. Moorehead not because he did anything wrong, but because the District politically opposes him and is stubbornly refusing to admit it made a serious error.

Please show your client this letter. Explain to them the legal and factual reality facing them. Nothing you write can change that the fact that the District improperly suspended Mr. Moorehead without notice or a hearing. Nothing you write can change that they blasted out a press release falsely stating he was “involved in” what happened at the Capitol Building, without talking to Mr. Moorehead. Nothing you write will change that they never corrected the false press release. There are no excuses for any of this.

I note that you failed to respond to my observation that the District’s admitted policy of suspending Mr. Moorehead without notice or warning violates his constitutional due process rights.

I can understand that this is a bitter pill to swallow from your client’s perspective. But do the right thing: correct the press release, call for peace, and let’s move forward toward resolving this dispute.

As to the laptop, you did not request it for 14 days after the event occurred and 12 days after his inquisition. To ask for it so late in the game indicates that the District has nothing else on Mr. Moorehead and that investigation does not have any real basis and are attempting to justify this *ex post facto*.

Do you still contend that his Fifth Amendment rights are at issue?

With every good wish, I am,

A handwritten signature in red ink, appearing to be the name Francis Malofiy, written in a cursive style.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT 11

From: "John Freund, III" <jef@kingspry.com>
Date: January 28, 2021 at 7:27:39 PM EST
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Re: JASON MOOREHEAD v. ALLENTOWN SCHOOL DISTRICT

Mr. Malofiy:
Mr. Moorehead has three district owned devices. He has an obligation to turn these over to the district upon request. I have no interest in escalating or extending this matter any further. Would you please confirm that he will make these device's available to the district by noon tomorrow. Otherwise I will file a Replevin action to retrieve them.

John E Freund
Jef@kingspry.com
610.332.0390

On Jan 28, 2021, at 5:13 PM, Francis Alexander Malofiy
<francis@francisalexander.com> wrote:

Dear Mr. Freund,

Attached please find my response letter to you.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1

EXHIBIT 12

From: "John Freund, III" <jef@kingspry.com>
Date: February 1, 2021 at 11:15:01 AM EST
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Return of District owned devices

Dear Mr. Malofiy,

This is the last request we will make for your client to voluntarily turn over his district owned devices. The district does not wish to make public your client's failure to comply with this simple directive. However, after numerous requests by the district as well as a personal visit to his home by the HR Department, without response from him or an assurance by you that he will turn over the devices, we will have no choice but to file legal action to retrieve them. In the event there is any question about the district devices Mr. Moorehead retains in his possession, below is listing of the specific devices issued to him.

Manufacturer	Model	Serial Number	Asset Tag	Device Name	Issued	Notes
Dell	Latitude 3180	61JQVP2	038539	RAU-CARTT-07L		Device frozen since 01/21/21
HP	Chromebook X390 11 G2 EE	5CD0167VVV	043911	RAU-COEDL-446	8/31/2020	Device active as of 01/28/20; Last Connection 01/20/2021
Apple	iPad 32GB Wi-Fi (5th Gen)	GCIJFBRHLF9	025856	RAU-MOOREH-IP	12/19/2017	Device active as of 01/28/20; Last Connection 01/20/2021

Please understand that aside from delaying the completion of the principal investigation at issue, Mr. Moorehead's continued refusal to surrender his devices in defiance of a specific district directive may constitute insubordination, which may subject him to discipline independent of the January 6 matter. For that reason I am alerting his union to this potential disciplinary action.

If the district does not have the devices or a positive commitment to promptly deliver them to the district by the end of business Tuesday, we will proceed through the courts.

Either get back to me or have Mr. Moorehead contact the district's HR Department.

Very truly yours,

John E. Freund

CC Mark Leibold AEA president



<!--[if lvm]--><!--[endif]-->**John E. Freund III, Partner** | King, Spry, Herman, Freund & Faul LLC
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Tami Mikulecky, Paralegal tlm@kingspry.com
Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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EXHIBIT 13

From: "John Freund, III" <jef@kingspry.com>
Date: February 3, 2021 at 4:47:17 PM EST
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: RE: Moorehead

Dear Francis,

The district has no interest in pursuing criminal prosecution. The name of the tech company is DFDR Consulting LLC. They will image the hard drives of the devices.

Unless you would prefer to deliver the devices to my office or the school district, we will have them picked up at your office between 1:00 and 2:00 PM Friday afternoon.

Mr. Moorehead is not waiving any rights by yielding up the district's equipment for inspection. The district does not require probable cause to inspect its own equipment and no one issued district devices has any expectation of privacy for the contents of their district issued devices.

This will confirm that I will share the report we get back from the consultant.

Please confirm that someone will be available to allow our courier to pick up the devices Friday afternoon.

Regards

John

<!--[if !vml]--><!--[endif]-->**John E. Freund III, Partner** | King, Spry,
Herman, Freund & Faul LLC



One West Broad Street, Suite 700 | Bethlehem, PA
18018

(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
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Tami Mikulecky, Paralegal tlm@kingspry.com
Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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From: Francis Alexander Malofiy <francis@francisalexander.com>
Sent: Wednesday, February 3, 2021 3:34 PM
To: John Freund, III <jef@Kingspry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>
Subject: RE: Moorehead

Dear John,

Pursuant to our phone conversation, please confirm in writing that there are no criminal allegations, concerns, or 5th amendment rights at play or at issue regarding Jason Moorehead.

Second, in response to my concerns regarding inspection protocols of the electronic devices, you had said that there is a tech company in Lansdale, PA that does this work for the District. Please provide the name of this company and what the procedure will consist of. You had said you would provide a copy of the tech report on the devices once performed. Please confirm.

Also, is there any other inspection other than that done by the aforementioned tech company? If so, please identify and specify. It is our thought that the devices should be provided directly to the tech company. Do you have any objection?

Lastly, it should be understood that by providing these devices, Mr. Moorehead is in no way waiving any rights. He has done nothing wrong and there was no basis to suspend him, put out a press release about him, "suspend" or "reassign" him, or take any other action against him whatsoever. By requiring Mr. Moorehead to turn over his devices, the District is further abusing and violating his constitutional rights on a fishing expedition to manufacture a pretextual basis to dismiss him. There was no probable cause, reasonable suspicion, or any legally cognizable indicia that could allow you to prosecute him or search his work devices.

That said, because the District has threatened to punish Mr. Moorehead further if the devices are not turned over, we are doing so under protest and without waiver of any rights.

Please get back to me regarding the above questions and concerns.

As to timing, tomorrow is no good as I am in trial all day.

Friday afternoon may work.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: John Freund, III [<mailto:jef@Kingspry.com>]
Sent: Wednesday, February 03, 2021 10:09 AM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Moorehead

Mr. Malofiy,

Thank you again for your return call and our conversation yesterday.

Would it be convenient for me to send someone to pick up the three devices from your office tomorrow?

I did attempt to call you but your voicemail was full.

John E. Freund



<!--[if !vml]--><!--[endif]-->**John E. Freund III, Partner** | King, Spry,
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mcaawthern@kingspry.com

Tracy Johnson, Compliance Administrator

tjohnson@kingspry.com

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EXHIBIT 14

From: "John Freund, III" <jef@kingspry.com>
Date: February 7, 2021 at 12:18:47 PM EST
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: RE: Moorehead [ALLENTOWN]

Dear Francis,

I am going to send a courier to your office at noontime Tuesday, weather permitting. If there is another time or place Tuesday for the exchange of the District's devices I will try to accommodate you, but I must have the devices by Tuesday.

The only thing holding up this investigation for the last three weeks is the district not having the return of its equipment. The longer this goes on the more likely it will appear to some that there is a reason Mr. Moorehead does not want the district to have its computers back. If this were another teacher refusing to deliver his district owned equipment without the fanfare of the issues surrounding January 6, that teacher would be suspended with pay as well and there would be an investigation and a decision made on whether to bring formal charges of insubordination. We are not looking go that here. This procedure is perfectly in line with the principles set forth in Loudermill. The Smith case that you cited is easily distinguishable from Mr. Moorehead's situation. In Smith and its companion case Dees, the Third Circuit found a that the firefighters had a property right in not being suspended without cause based in the Civil Service Act and the CBA. There is no analogous property right in a teacher's specific teaching assignment.

Please confirm that my courier will not make a wasted trip to Media and that we can more on to a resolution of Mr. Moorehead's situation.

Regards

John



<!--[if !vml]--><!--[endif]-->**John E. Freund III, Partner** | King, Spry,
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From: Francis Alexander Malofiy <francis@francisalexander.com>
Sent: Friday, February 5, 2021 6:19 PM
To: John Freund, III <jef@Kingspry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>
Subject: RE: Moorehead [ALLENTOWN]

Dear John,

I too do not wish to stifle our new found civility and cooperation. And, I agree that ultimately the District should have the laptops, but you are not addressing my completely legitimate concerns about how this matter has previously been handled. I am trying to protect Jason's rights going forward given the illegal and bad faith manner in which he has been treated.

According to the US Supreme Court, the Third Circuit, and the US Constitution, **before** a school district can take any disciplinary or deprivation action against a tenured teacher such as Jason Moorehead —including leave with pay—it has to provide a Loudermill Notice which details the legal charges being made and the evidence supporting the

charges. See Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011)

Given that the school district immediately placed him on leave without notice or an opportunity to be heard (a clear cut due process violation), he is entitled to now know on what legal basis you placed him on leave in the first place and what evidence you have. You can't just suspend him and then look for the evidence to justify it later. Every day that you do not provide him a Loudermill notice after he was illegally suspended, makes the due process violation more egregious.

If you're not going to tell us on what basis he was suspended, and there was no basis, then by handing over the laptops I would essentially be allowing the District to lawlessly fish for evidence against my clients to retroactively justify the discipline against him. This, I should note, was a hallmark of the Star Chamber inquisitions. The defendant was hauled into court on unknown charges, then investigated and questioned, and then found guilty of charges devised as a result of his testimony.

In America, the prosecutor has to offer some sort of legal and factual predicate which justifies the action; otherwise, it is a malicious prosecution. It really looks for all the world like the District wants this computer inspection to fish for some ex post facto pretextual reason to somehow justify the District's prior actions.

Just to make it clear, I do think the District ultimately has a right to its property. However, it can't be for the wrong reasons. If the District seized the laptops of all teachers who are registered Republicans, but not the Democrats, that would be clearly illegal and improper. Here, you are similarly asking for the devices because of political motivations and to justify the prior actions taken against my client.

While I am amenable to returning the laptop, I need you to first provide me with a Loudermill notice that explains why this is happening to him. It won't correct what has happened, but it will help ensure that going forward Mr. Moorehead's due process rights are not further violated.

Bottom line, I need you and the District to comply with the Constitution so I can know on what basis this investigation is proceeding. ***The District has no right to place my client in legal jeopardy without telling him why.***

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005

E: francis@francisalexander.com

From: John Freund, III [<mailto:jef@Kingspry.com>]
Sent: Friday, February 05, 2021 4:12 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: RE: Moorehead

Dear Francis,

I don't want to stifle this new found civility and cooperation, but I have made it a strict practice not to comment on conclusions reached in an investigation until the investigation is complete. I hope you will agree that have tried to be cooperative in answering most of your questions, certainly more information than I usually give out. Suffice to say that Mr. Moorehead will not be back in his classroom until the investigation is complete and it will not be complete until we have his devices.

Please confirm when we can pick them up.

Regards,

John



<!--[if !vml]--><!--[endif]-->**John E. Freund III, Partner** | King, Spry,
Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA
18018

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Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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EXHIBIT 15

From: [Francis Alexander Malofiy](#)
To: [John Freund, III](#)
Cc: [Francis Alexander Malofiy](#); [AJ Fluehr](#)
Subject: RE: Moorehead/ASD Retrieval of Computer equipment [ALLENTOWN]
Date: Monday, February 08, 2021 5:22:17 PM

Dear Mr. Freund,

Thank you for finally providing me the District's rationale for initiating and continuing the actions against Mr. Moorehead.

The email from Tony Pidgeon says only that Jason is suspected of being part of the civil unrest at the Capitol Building (of which there has never been any evidence). As noted, numbers 2 and 3 of your email—concerning his online posting and what websites he visited on District devices—were plainly manufactured after the fact to justify what the District already illegally did. The District cannot use the speculation that Jason may have visited political websites (which you tellingly cast as “extremist”) on district devices (a minor offense even if true), to somehow justify an improper suspension and press release. Similarly, the District cannot suspend and discipline a teacher for attending a rally because it got emails from his political opponents, nor can it cast his expression on matters of public concern as “disruptive” to the classroom to justify an ideological persecution.

However, because you are threatening Jason with additional discipline and insubordination, if the devices are not turned over—further ruining his and his family's lives—we will be turning over the devices (in accordance with our prior agreement and that the proper protocols are followed, that we are also provided a copy of the hard drive, and that we are provided a report, analysis, etc.) Our provision of the devices should in no way be construed as waiver of any legal or factual arguments, as you previously agreed.

Let me remind you of my words to you in my letter of January 26, 2021. “The appropriate response is to say “I'm sorry” and to correct the defamatory and false statement made about my client. Yet again, you have failed to do so.”

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: John Freund, III [mailto:jef@Kingspry.com]
Sent: Monday, February 08, 2021 2:21 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Moorehead/ASD Retrieval of Computer equipment

Dear Francis,

You have asked why Mr. Moorehead was assigned to home with pay on January 7, 2021.

Beginning on the day of January 6 the school district received numerous emails, phone calls and social media contacts expressing strong objection to the photographs and posts on social media by Mr. Moorehead. Based on these complaints and a review of the social media postings, immediate questions were raised as to the extent of Mr. Moorehead's involvement in the January 6 events. Mr. Moorehead was contacted by the HR Department and assigned to home pending investigation into his involvement. On January 8, Mr. Moorehead was interviewed in the presence of this union president. Following that meeting it was determined that a review of Mr. Moorehead's district owned computers should be reviewed to corroborate and dispute the information he provided during his interview.

To summarize:

1. The initial reason for assignment to home was to investigate the extent of Mr. Moorehead's involvement in the events of January 6 to determine whether he was involved in any activity that could constitute a violation of Section 1122 of the Pennsylvania School Code.
2. A secondary reason for his assignment to home was to investigate and consider his decision to post items on the internet that he knew or should have known posed a risk of undermining his role and credibility as a teacher or otherwise posed a risk of disruption to the educational process or was in violation of district policy regarding off duty conduct of teachers.
3. Review of district owned devices is a common practice in teacher investigations. In this case it was particularly necessary to corroborate or contradict the information supplied during his interview that he did engage various extremist websites, which if done through the district network or with district equipment would have been a violation of the district's Acceptable Use Policy.

Below is the text of an email sent by the Executive Director of Human Resources to your client at 11:48 on January 7:

Dear Mr. Moorehead,

This will confirm my earlier direction to you that based upon certain social media posting that raise serious concerns about your involvement in the civil unrest that occurred at the United States Capitol Building yesterday and the substantial disruption that has already occurred in by the public in reaction to those postings, you are hereby assigned to home with pay and benefits pending further investigation of your involvement. While your

assignment to home remains you are relieved of your teaching duties and you are directed to have no contact with students, or staff members outside of union representation. In the meantime, if you have not already done so you are strongly advised to take down any posting you have placed on social media.

We will be in contact with you in the near future.

**Anthony Pidgeon
Executive Director of Human Resources
Allentown School District**

We will continue to disagree whether there was any violation of Mr. Moorehead's rights. However, we appreciate your cooperation in returning the district owned equipment so that the investigation can be concluded.

Please confirm that you will bring the devices with you tomorrow and let me know what is most convenient for you to have them delivered.

Regards,

John

John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
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Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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EXHIBIT 16

#protectourchildren



Promise Neighborhoods started this petition to Allentown School Board

We the parents and neighbors are signing to oppose anyone that attended the storming of the capital in Washington. The actions of the rioters have left our students and families feeling unprotected in their classroom and we wonder how can we disrupt the school to prison pipeline when those that are paid to protect, educate and heal us support white supremacy.

#yoursilencewontprotectyou
#protectourchildren.



Start a petition of your own
This petition starter stood up and took action. Will you do the same?

Start a petition

576 have signed. Let's get to 1,000!

At 1,000 signatures, this petition is more likely to be featured in recommendations!

First name

First name

Last name

Last name

Email

Email

Media, 1063
United States

- Please share my name and email address with Promise Neighborhoods, so that I can receive updates on this campaign and others.
- Display my name and comment on this petition

Sign this petition

By signing, you accept Change.org's [Terms of Service](#) and [Privacy Policy](#), and agree to receive occasional emails about campaigns on Change.org. You can unsubscribe at any time.

Updates

500 supporters 1 year ago

Promise Neighborhoods started this petition 1 year ago

Reasons for signing



Maggie Riegel 1 year ago

White supremacists and terrorists do not belong in our country, let alone teaching children. The teacher from ASD who stormed the Capitol on January 6th in attempt to execute members of Congress and overthrow our government deserves to be fired and forever remembered as a traitor to our country.

Report



Anthony Downing 1 year ago

Our children deserve to be safe and cared for, I stand with my community to demand our schools address these concerns.

Report

View all reasons for signing

Review a policy violation

Petitions promoted by other Change.org users



#protectourchildren

Petition details **Comments** Updates

Reasons for signing

See why other supporters are signing, why this petition is important to them, and share your reason for signing (this will mean a lot to the starter of the petition).

**Courtney Harrington**

3 weeks ago

I want to erase my signature. I want to delete it!

♡ 0

[Report](#)**Christine Bainbridge**

1 year ago

This is not a suppression of free speech: he was allowed to attend the protest and post about it. It is the perfect example of the consequences attached to using your right to free speech; employment protection is not one of them.

♡ 0

[Report](#)**Ms Ford Concerned Parent**

1 year ago

This teacher is entitled to his right to protest and free speech. The issue is he was protesting a lie. The election was not stolen. The Supreme Court, our highest authority confirmed that. It should not be ignored that the votes being protested we're in Black and Brown cities. Indicating that people of color cheated and are not entitled to vote freely. Knowing and protesting a fair and free election is biased. His vote was not being questioned in PA because of his zip code. How can any parent trust him, if he trusted a lie. We need teachers who teach and believe the TRUTH. Who does he see when he looks at his students?

♡ 0

[Report](#)**Liz Mietz**

1 year ago

Jason Moorehead needs to be fired immediately.

♡ 0

[Report](#)**Jefferson Vitelli**

1 year ago

Anyone who participated in a blatant coup attempt must be held accountable for attacking our Democracy...

♡ 1

[Report](#)**Sharon Fraser**

1 year ago

This teacher actions should have consequences. It cannot just be "I have rights " because even with rights you have responsibilities. The parents, students and citizens of Allentown have the right to not have a person with now known racist, white supremacist, terroristic destructive leanings teach their precious children. How many times have you already transferred that hate you carry to our children? How many times have you made a decision that was against a child of color? We should not have to second guess your attitude and behavior. You chose to be a teacher, your behavior should honor the job and the children you serve.

♡ 1

[Report](#)**Morgan Tucker**

1 year ago

Black and brown children deserve better and there are plenty of more qualified people out there that can do this job.

♡ 1

[Report](#)



Adelle Mantle

1 year ago

I'm signing, because hate does not belong in our schools, and his actions have demonstrated that he is a clear risk to BIPOC students.

♡ 1

[Report](#)



rebecca serba

1 year ago

We live in a for not predominantly diverse area. My concern would be regarding his beliefs affecting his ability to unbiasedly teach children that consists largely of minorities. I don't really want some racist Trump supporter teaching my black child.

♡ 2

[Report](#)



JD Stefancin

1 year ago

Insurrection on behalf of the bad guys seems impolite

♡ 0

[Report](#)



Sophie Goodfellow

1 year ago

White supremacy does not belong in schools. Our students deserve to feel safe and this teacher has already made discriminatory remarks towards students in the past. He should not be reinstated.

♡ 2

[Report](#)



Julie Vautrin

1 year ago

A person who was part of an insurrection gave up their right to be considered a sane, law-abiding, country-loving individual.

♡ 1

[Report](#)



Christopher Haring

1 year ago

White nationalists do not belong in positions of power and authority over our children.

♡ 1

[Report](#)



DeShawn Washington

1 year ago

DeShawn Washington

♡ 1

[Report](#)



Allison Mickel

1 year ago

Mr. Moorehead stated he attended the storming of the Capitol to "listen and learn." This was not what Mr. Trump or any of his associates claimed that this event was going to be. Mr. Moorehead's self-defense is disingenuous. He wanted to "listen and learn" to someone wanting to overturn... [Read more](#)

♡ 1

[Report](#)



Maggie Riegel

1 year ago

White supremacists and terrorists do not belong in our country, let alone teaching children. The teacher from ASD who stormed the Capitol on January 6th in attempt to execute members of Congress and overthrow our government deserves to be fired and forever remembered as a traitor to our country.

♡ 6

[Report](#)




Kumari Devis

1 year ago

I care about our kids


♡ 1

[Report](#)

- 


Ashley Blake
1 year ago

Our children deserve better!!

♡ 1
[Report](#)
- 


Anthony Downing
1 year ago

Our children deserve to be safe and cared for. I stand with my community to demand our schools address these concerns.

♡ 4
[Report](#)
- 


batts hasshan
1 year ago

I believe our children deserve safe and nurturing schools

♡ 1
[Report](#)
- 

Tuoi Dao
1 year ago

I am signing to fight for social justice

♡ 1
[Report](#)
- 

Pas Simpson
1 year ago

I am signing to stand and protect our children

♡ 1
[Report](#)



Promise Neighborhoods of the Lehigh Valley



1 hr · 🌐

Calling all parents and neighbors. Today your time to make your voice heard.

Register below for tonight's school board meeting
#ProtectOurChildren

http://allentownsd.ss14.sharpschool.com/OurDistrict/board_of_school_directors/virtual_board_meetings



👍 1

1 Comment 1 Share

🎥 Watch Video





11

THURSDAY, FEBRUARY 11, 2021 AT 6:30 PM EST

Allentown School Board Meeting

Online Event

About Discussion

Details

12 people responded

Event by Promise Neighborhoods of the Lehigh Valley

Go With Friends

4
WENT

8
INTERESTED

See All



9:04



March 1
2:57 AM

Edit



Search

Promise Neighborhoods of the Lehigh Valley



Menu

Our Board

Pastor Gregory J. Edwards – Board Chair

Senior Pastor of Resurrected Life &
President, RCDC
Allentown, PA
May 2016 – Present

Dan Bosket – Board Treasurer

Director, CADCA
Allentown, PA
January 2019 – Present

Yuriko de la Cruz – Board Secretary



9:04



March 1
2:57 AM

Edit

Allentown, PA
January 2019 – Present

Yuriko de la Cruz – Board Secretary

Healthcare Professional
Allentown, PA
January 2019 – Present

Camilla Greene

National Facilitator, San Francisco
Coalition of Essential Small Schools
Allentown, PA
January 2019 – Present

Sharon Fraser

Health & Transformation Coach
Allentown, PA
January 2019 – Present

Lisa Conover

Realtor; ASD School Board Member
Allentown, PA
January 2019 – Present



9:04



March 1
2:57 AM

Edit

ALLENTOWN, PA

January 2019 – Present

Milagros Canales

Community Advocate, CACLV

Allentown, PA

January 2019 – Present

Julie Thomases

Community Advocate

Allentown, PA

January 2019 – Present

Bill Coles

Non-Profit Volunteer

Allentown, PA

May 2016-Present

John Paul Marosy

Christian Living Communities

Allentown, PA

January 2019 – Present





PROMISE NEIGHBORHOODS
OF THE LEHIGH VALLEY

WHO WE ARE



ABOUT PNLV


From Allentown to Bethlehem and Easton, Promise Neighborhoods are aspirational neighborhoods committed to the success of children, from cradle to career. Each neighborhood mobilizes its unique assets—people, businesses, programs and services, resources, public policy—within self-governing bodies that practice shared decision-making, shared resources, shared accountability, and shared outcomes for the children living and learning in the neighborhood.

Promise Neighborhoods view each community through the lens of its unique assets, to vision a better future, measured by how well these resources coordinate around clear results for children. Striving to have these best practices become common practice, Promise Neighborhoods are quickly becoming the region's premier vehicle for achieving neighborhood transformation, one child at a time.

MEET THE TEAM

CORE PNLV/ZYV

 DR. HASSHAN BATTS

 PAS SIMPSON

 MICHAEL RICHARDSON

 DR. CYNTHIA MOTA

 JENNIFER ALVARADO

 JOSE RIVERA

 JEANI GARCIA


 DR. STARR ALANG

 TARA CASTRO

 NAKIA BATTIS


 PHYLLIS ALEXANDER

INTERNS

 LEO ROONEY

 CHRIS RIVERA

 GARDYNEY DESHOMMES

 NAQUON "QB" GODFREY, JR

 SHIANN RIDDICK

KEY VOLUNTEERS

 JOSE "JEJO" RIVERA, JR

 JULIE THOMASES

 YUKIKO DE LA CRUZ

 JUSTICE SIMPSON

 ELEANOR WOMACK

 AYANNA SIMPSON

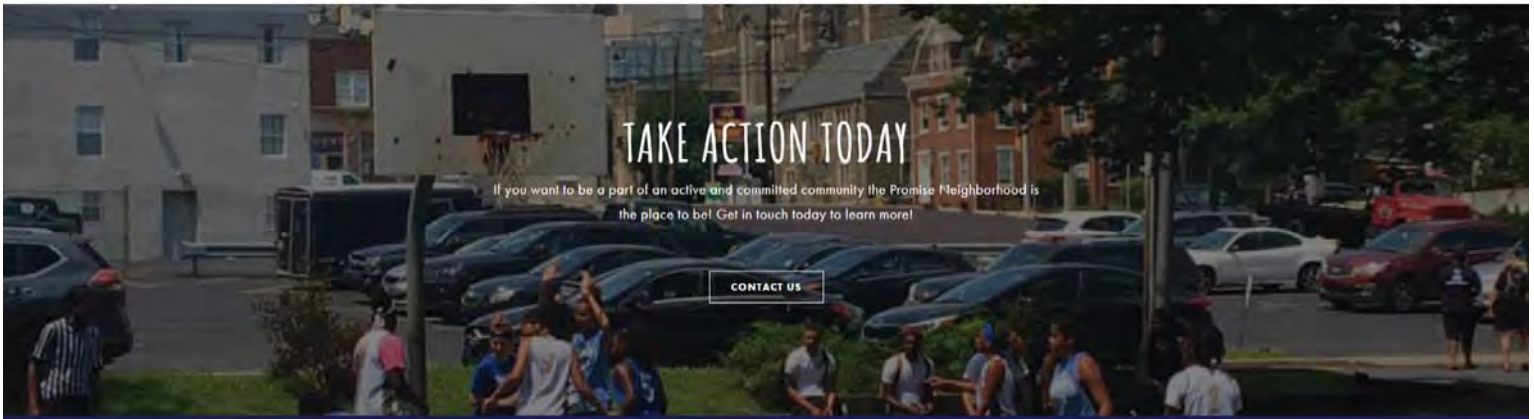
 NYQUAN GODFREY

THE BOARD

 CHAIR REV. DR. GREGORY EDWARDS

 TREASURER SHARON FRASER

 SECRETARY YUKIKO DE LA CRUZ



TAKE ACTION TODAY

If you want to be a part of an active and committed community the Promise Neighborhood is the place to be! Get in touch today to learn more!

[CONTACT US](#)

Receive Promise Neighborhoods of Lehigh Valley's newsletter by signing up with your email address!

[SIGN UP](#)

Yes, I would like to receive newsletters from Promise Neighborhoods of Lehigh Valley. (You can unsubscribe anytime)

By submitting this form, you are consenting to receive marketing emails from: Promise Neighborhoods of the Lehigh Valley, 1101 Hamilton Street, Allentown, PA, 18101, <http://promiseneighborhoodslv.org>. You can revoke your consent to receive emails at any time by using the [SafeUnsubscribe®](#) link, found at the bottom of every email. Emails are serviced by Constant Contact

PROMISE NEIGHBORHOODS

Promise Neighborhoods of the Lehigh Valley works to ensure that children have the resources and support they need to succeed, from cradle to career in Lehigh Valley, Pennsylvania.

SERVING THE LEHIGH VALLEY

ADDRESS
 1101 Hamilton St, Ste 102
 Allentown, PA 18101

OFFICE
 610-351-4268

EMAIL
jennifer@promiseneighborhoodslv.org

CONNECT WITH US



CONTACT



11:16



facebook.com



1

1 Share

Like

Comment

Share



Promise Neighborhoods of the Lehigh Valley

February 4 at 9:05 AM

Please sign and share this petition as we prepare for the February 11th School Board Meeting.

<http://chnng.it/tFs7JsqpQx>



CHANGE.ORG

This campaign needs you now

#protectourchildren

2

1 Share

Like

Comment

Share



Promise Neighborhoods of the Lehigh Valley

February 3 at 10:26 AM



Watch Video



POWER POWER Lehigh Valley



February 4 at 1:31 PM

Jason Moorehead, the ASD teacher who participated in the riot at the Capitol, is seeking to be reinstated as an instructor at Raub Middle School. He claims that he was there to "listen and learn" from his President, but the event was never promoted as an open learning opportunity. We also have to ask: what more is there to listen and learn from a man who used his position of power to harm Black, brown, immigrant, queer, and poor communities for 4 years?

Our friends and family at Promise Neighborhoods of the Lehigh Valley started this petition to speak out against letting him back in contact with our children. Schools should be safe places to learn and grow, not to be exposed to misinformation and racist conspiracy theories.

Sign and share here:

<http://chnng.it/BnCyKzcQ6T>



CHANGE.ORG

Have you seen this petition yet?

#protectourchildren

👍❤️ 8

8 Shares

Message





Promise Neighborhoods of the Lehigh Valley

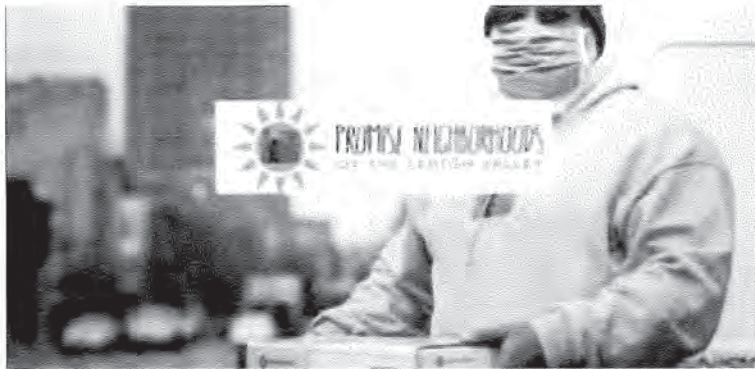
January 8 · 0



Promise Neighborhoods of the Lehigh Valley is a black-led, antiracist, liberation-based grassroots organization. PNLV focuses on healing and community capacity-building through leadership development, violence prevention, community engagement, and health equity.

Dear Françoise,

Yesterday, a right-wing militia stormed the Capitol building. They brought guns, tear gas and homemade bombs. They broke windows, brandished weapons and waved the Confederate flag.



Promise Neighborhoods of the Lehigh Valley is a black-led, antiracist, liberation-based grassroots organization. PNLV focuses on healing and community capacity-building through leadership development, violence prevention, community engagement, and health equity.

Dear Friends

Yesterday, a right-wing militia stormed the Capitol building. They brought guns, tear gas, and homemade bombs; they broke windows, brandished weapons, and waved the Confederate flag.

This was not a protest. These people were not motivated by justice or goodwill, but by hate and fear. They sought to drive your elected representatives from their legislative chambers, and halt the certification of your democratically-cast votes—in short, they sought to ensure that your voice was not heard. They fought to ensure that you ceased to matter.

What we saw yesterday was shocking, but was also, in many ways, unsurprising. These people and their violence have long been encouraged by the hateful and divisive words of those in power. Yesterday's act of domestic terrorism was unmistakably American, and the insurgents' horrifying sense of righteousness was the inevitable result of a political movement built on fear, selfishness, and the belief that Black lives don't matter, that the American government should work only for those who look most like its founders.

If you are angry, if you are scared, we hear you, and we're here for you. And we promise that we *will* come out of this stronger. **As hatred seeks to destroy our nation, it is time for healing, compassion, and community building.** Martin Luther King, Jr. spoke of creating a "beloved community," centered in equity and the radical welcome of those who are different from us. We are most powerful when we come together as that beloved community. Change starts with us, and with how we show up for each other, now and always.

Yours in Power,
Promise Neighborhoods



MsPhoebe Harris

February 5 · 🌐



THU, FEB 11

Allentown School Board Meeting

4 people went

☆ Interested



1

EXHIBIT 17

From: Francis Alexander Malofiy
Sent: Wednesday, March 31, 2021 2:02 PM
To: John Freund, III <jef@Kingspry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: RE: Jason Moorehead's Chromebook Password and Login Information with 2 Factor Authentication

Dear John,

I message finds you in better health and spirits.

However, it has been roughly a month since you had everything you requested and still no decision???

You were supposed to share with me the IT reports. However, I have nothing from you.

What is the board's decision on Jason Moorehead.

It would be very unfair to hide the IT reports until a decision is made, a board meeting conducted, and give them to me after-the-fact. This is the exact opposite of what we discussed.

Please contact me directly to discuss at 215-500-1000.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: [Francis Alexander Malofiy](#)
To: [AJ Fluehr](#)
Subject: FW: Jason Moorehead
Date: Wednesday, March 31, 2021 2:48:01 PM
Attachments: [Exported Results.zip](#)
[ChromeBook Exported results.xlsx](#)

From: John Freund, III [mailto:jef@Kingspry.com]
Sent: Wednesday, March 31, 2021 2:38 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Jason Moorehead

Francis,

I apologize for not getting these to you earlier, still doing some physical therapy. Attached is everything we got from DFS Consulting. At this point we have completed our investigation. We are waiting for the Superintendent to make a decision regarding what he wants to do going forward. If his decision is to proceed with termination, we would issue a Notice for a Loudermill Hearing, than there would be a second decision point after that as to whether to proceed with an actual termination hearing that requires notice as specified under the School Code. Also, there is an option for a Grievance Arbitration. The School Board would not be making any decision until Mr. Moorehead had the opportunity for a hearing. If the superintendent decides on some course other than termination, he can administratively implement his decision. I will try to give you a call tomorrow sometime.

I hope we are still going fishing.

Thanks,

John

John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
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Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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EXHIBIT 18



FRANCIS ALEXANDER LLC

APRIL 1, 2021

John E. Freund III, Esquire
KING, SPRY, HERMAN, FREUND & FAUL LLC
One West Broad Street | Suite 700
Bethlehem, PA 18018
T: (610) 332-0390
F: (610) 332-0314
E: jef@kingspry.com
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Continued Failure to Correct Defamatory Statements - Personal Liability

Dear Allentown School District Board of Directors,

The time is long past for you to correct what you have done to Jason Moorehead. Without any attempt to contact him, the School District issued a press release on January 7, 2021 through multiple channels defamatorily claiming that Jason was at the US Capitol Riot on January 6, 2021. He was also suspended immediately without notice in violation of his due process rights, and his contractual rights to confidentiality. Jason was a 17-year teacher with no disciplinary record who deserved better.

Had the District attempted to contact Jason, they would have immediately realized that he was at all points over 1 mile away from the Capitol Building and had done nothing wrong. In fact, on January 8, 2021, the District did interview Jason and did ascertain that he was nowhere near the US Capitol Building. Despite knowing that he had done nothing wrong, the District did not correct its defamatory press release, continued to foster the impression that Jason had participated in the riot, and did not reinstate him.

Instead, the District was silent for weeks, until it then requested to inspect all of Jason's devices. This was clearly a fishing expedition to try to find something to pretextually pin on him. Now, despite the fact that the District has known since mid-February that Jason's devices revealed nothing improper, he remains suspended and the District's press release is uncorrected. Nothing can change the fact that it has been 3 months since the District has known the truth and they have refused to correct the record. Every day the damages skyrocket.

To the extent that the District is still trying to find a reason to terminate Jason, *the District needs to understand that the defamation on January 7 makes this an open and shut case that it cannot win.* Nothing can change the fact that the District suspended Jason without Loudermill notice or hearing (an egregious due process violation) based on false grounds, then egregiously defamed him by publicly claiming he participated in the Capitol Riot. Restated, the Board needs to understand that the Third Circuit is crystal clear that what the District did to Jason violates his constitutional rights. See Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011) (holding that placing employee on leave with pay, but without notice, was actionable due process violation).

There is nothing the District can do to unring this bell, and any attempt to hold a sham Loudermill hearing now simply illustrates (1) just how badly the District has violated and is continuing

to violate Jason's due process rights, and (2) that the District has a political vendetta against Jason and refuses to admit that the basis for disciplining him was absolutely false.

The Board Members and individual administrators should be aware that it's not just the District that will be liable, but that ***Parker, Pidgeon, Wilt, Conover, Miller, Brace, and the rest of them will be personally sued and their assets taken.*** Where the policymakers in the District know about the wrongful conduct, fail to correct it, ratify it, and even endorse it the law says they are personally on the hook. Not only will the administrators and board members be personally liable for the harm they have done to Jason, but they will also be liable for punitive damages. Punitive damages are a near certainty given the egregious failure to correct the false statements for months even as he kept being viciously attacked and threatened. Keep in mind that punitive damages cannot legally be paid by the District or Board entities, and ***must*** be seized from the Board Members and administrators' ***personal wealth.***

The behavior of the Board Members on the recorded board hearings in the last few months are the final nail in the coffin. They reveal extreme animus for Jason and for the Board's political opponents, and a complete disregard for the falsity of the defamatory statements being made about where Jason was on January 6, 2021. They also demonstrate a bad faith willingness to tolerate blatantly defamatory accusations regarding Jason's teaching record.

The Board had, and has, a duty to immediately correct and reprimand those responsible for illegally disciplining and defaming Jason, most notably Thomas Parker. Why has the Board allowed Parker to so clearly violate Jason's Constitutional rights? The utter failure of the Board to take any corrective action in the last several months makes it readily apparent that Jason is being singled out and attacked because of his politics.

It is clear beyond any doubt that the District and Board do not want Jason Moorehead as a teacher. The Board's behavior, and its successful actions in poisoning the community against him, have also made it impossible for Jason to return to the Allentown School District and to teach in general. He does not come to this conclusion lightly after 17 years of dedicated and unblemished service, but this is not an environment any reasonable person could return to. In fact, the conduct of the Board has created a safety issue for Jason and his family.

The District, the Board Members, and the administrators need to resolve this now. Does Allentown School District and the individuals running the show want to be made into a national example of how not to run a public school district? To resolve this matter the demand is \$5 million and a correction of the record. If the District does not respond by April 12, 2021, then a lawsuit will be filed against the District, the individual administrators, and Board Members.

Please be sure to share this letter with your clients and present it at the next board meeting.

With every good wish, I am,

A handwritten signature in red ink, appearing to be 'F. Malofiy'.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT 19



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

April 9, 2021

Sent via Email, First Class Mail, and
Certified Mail

Mr. Jason Moorehead
5360 Celia Drive
Allentown, Pa 18106

RE: NOTICE OF LOUDERMILL HEARING

Dear Mr. Moorehead:

By this letter, the Allentown School District is offering you the opportunity to attend a meeting with Human Resources and Administration, which will serve as a Loudermill Hearing.

Specifically, the Loudermill Hearing will address evidence of an event that occurred on January 6, 2021 in Washington, D.C. that turned violent and was generally perceived as associated with right wing extremists and White Supremist groups. Specifically, the issue to be addressed is whether your posting of photographs of yourself and other postings related to an attack on the U.S. Capitol resulted in a violation of Local Community Standards. Other issues of concern are whether you violated the District's Acceptable Use Policy, whether you violated School Board Policy 419 regarding Setting Standards for Teachers Off Campus Conduct, and whether you violated the personal day leave policy.

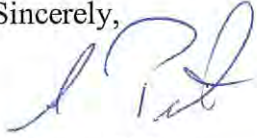
During the Loudermill Hearing, your social media postings and comments will be reviewed along with communications made to the Allentown School District by local community members, including parents of students who are enrolled at Raub Middle School. The Loudermill Hearing will address how your social media postings and comments conflict not only with the Local Community Standards of Raub Middle School, but also with the Allentown School District in general.

If the evidence warrants, your inappropriate actions and conduct could constitute grounds to recommend serious discipline, including but not limited to termination of your employment with the Allentown School District.

The Loudermill Hearing is scheduled for Thursday, April 15, 2021 at 3:00 p.m. at the Allentown School District Administration Building located at 31 South Penn Street, Allentown, PA 18105. You may bring a union representative, your legal counsel, or another supportive adult to this Loudermill Hearing.

Please confirm your attendance at the Loudermill Hearing with me on or before Tuesday, April 13, 2021 at 3:00 p.m. At that time, kindly advise whether you request union representation and/or representation by legal counsel. I can be reached at (484) 765-4231 and/or pidgeona@allentownsd.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Pidgeon'.

Anthony Pidgeon
Executive Director of Human Resources

cc: Francis Malofiy, Esquire (via email correspondence, only)
Mark Leibold, AEA

From: John Freund, III [mailto:jef@Kingspry.com]
Sent: Friday, April 09, 2021 4:23 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Jason Moorehead

Dear Francis,

Attached is a Loudermill Notice that was sent to Mr. Moorehead this morning by Human Resources. I know that you may disagree with the timing of this, however, I am confident based on having been involved in dozens of these cases, that the investigation precedes Loudermill and Loudermill precedes any of issuance of Formal Charges of Hearing. No Final Determination of whether the District will seek Moorehead's termination will be made until the Loudermill hearing is either completed or is waived.

Let me know if your client and/or you intend to participate in the Loudermill Hearing.

Best Regards,

John

John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
www.kingspry.com | [CV](#) | [Sign-up for our news alerts](#)

Tami Mikulecky, Paralegal tlm@kingspry.com
Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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EXHIBIT 20

From: [Francis Alexander Malofiy](#)
To: [John Freund, III](#)
Cc: [Francis Alexander Malofiy](#); [AJ Fluehr](#)
Subject: RE: Jason Moorehead [ALLENTOWN]
Date: Tuesday, April 13, 2021 5:00:27 PM
Attachments: [CBA Excerpt \(Highlighted\).pdf](#)

Dear John,

Give me a break. Do you really need me to call you out on the defective and pathetic Loudermill notice?! It's one thing for Parker and the District to utterly ignore the law; however, it is another thing altogether for you to enable their illegal actions. You explicitly said that the District wanted to review Jason's devices to confirm that he was not at the Capitol building—the false reason for which he was put on leave three months ago—and that if he was not (which he wasn't) the recommendation was that he be reinstated as a teacher and the defamatory statement corrected.

Now you're sending me a confusing and deficient Loudermill notice, dramatically shifting the goal posts, claiming that the District wants to fire him for completely different politically motivated reasons. Yet, the District refuses to correct the false and defamatory statement it put out on Jan. 7 when placing him on leave! What we are talking about here is the fundamental fairness of the proceedings, which has been denied to my client.

He is not going to participate in a clearly predetermined sham hearing after being illegally suspended for three months for a completely different (and false) reason that has not been corrected. It is plain as day the District wants him gone and has wanted him gone since January 7, 2021, and is casting about for any pretextual reason to terminate him.

Importantly, you have completely missed my point about "timing." The issue is not whether an investigation precedes a Loudermill hearing. The issue is that your client suspended him **before notice, an investigation, and a hearing**. Your client does not get to suspend first, investigate later.

This is not because I say so, **it is because the Third Circuit says so**. Where the CBA (Article 10, attached) provides that an employee cannot be disciplined without just cause, the Third Circuit is unambiguously clear that even putting an employee on paid leave for just 8 days without notice or hearing is a serious due process violation. See Dee v. Borough of Dunmore, 549 F.3d 225 (3d Cir.2008); Smith v. Borough of Dunmore, 633 F. 3d 176, 180 (3d Cir. 2011). Needless to say, Jason's leave is far beyond 8 days. To compound matters, the District gave a false reason to the public and defamed him, which violates Section F of Article 10 (prohibiting public criticism of teacher by the District).

Nothing you have written addresses the Dunmore cases or the CBA. Before anything happens, you need to address and acknowledge these cases. They directly affect the fairness of the procedures being afforded to my client past, present, and future. Obviously, **the same biased administrators and Board Members who attacked him so clearly in violation of his rights should in no way be allowed to participate, govern, or control any process going forward**.

Why are you even attempting to proceed with a Loudermill hearing? I've already made it clear Jason

cannot return to Allentown because the District has made that an impossibility. No reasonable teacher in his position could return given the District's conduct.

The only thing that makes sense at this point is for the District to compensate him for the defamation and what they have put him through, and for Jason and the District to part ways.

If we have to file suit over this, it's going to be really bad for the District. I am offering a way for the District to resolve this relatively quietly and for a discount and they are throwing it away.

Moreover, I am not available April 15. I am in trial.

Lastly, to date you have failed to correct the defamatory statement. If a fair process is to occur, it starts with the correction of the defamatory statement.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: John Freund, III [mailto:jef@Kingspry.com]
Sent: Tuesday, April 13, 2021 4:53 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: FW: Jason Moorehead

Dear Francis,

Hope you are completely recovered from your round with the virus. I am pretty much back except a real fix will require a cardiac procedure in May.

Please let us know whether Mr. Moorehead will be attending the Loudermill hearing on Thursday or whether he will waive the hearing.

Largely for reasons of socially distancing the location of the hearing will be changed the large conference room in our office on the 6th floor.

I look forward to hearing from you.

John

John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
www.kingspry.com | [CV](#) | [Sign-up for our news alerts](#)

Tami Mikulecky, Paralegal t1m@kingspry.com
Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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From: John Freund, III
Sent: Friday, April 9, 2021 4:23 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Jason Moorehead

Dear Francis,

Attached is a Loudermill Notice that was sent to Mr. Moorehead this morning by Human Resources. I know that you may disagree with the timing of this, however, I am confident based on having been involved in dozens of these cases, that the investigation precedes Loudermill and Loudermill precedes any of issuance of Formal Charges of Hearing. No Final Determination of whether the District will seek Moorehead's termination will be made until the Loudermill hearing is either completed or is waived.

Let me know if your client and/or you intend to participate in the Loudermill Hearing.

Best Regards,

John

John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
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Tami Mikulecky, Paralegal tjm@kingspry.com
Michelle Cawthern, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

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ARTICLE 7 — CONTRACT SECURITY

Section A. Nothing contained in this Agreement shall in any way abrogate or diminish the right of either party to seek equitable relief in the courts, including the right of either party to seek such relief if either believes a strike or lockout has occurred. The utilization of the grievance procedure established in this Agreement shall not be considered a prerequisite for such recourse to the Court.

Section B. In the event that subject matter contained in this Agreement which is also provided for in the Public School Code and where said Public School Code has established a procedure for the resolution of any disputes which may arise concerning any subject matter, the procedures established by the School Code shall have precedence over the grievance procedure established in this Agreement. The grievance procedure of this Agreement shall not apply to disputes arising over the retention or non-retention of temporary professional employees and Salaried Substitutes. Such disputes shall be resolved in accordance with statutory and common law.

Section C. Nothing contained in this Agreement shall be so construed or implemented so as to be in derogation of any of the rights, duties, or obligations of the parties hereto and inconsistent or in conflict with, or in violation of the provisions of any statute or statutes enacted by a General Assembly of the Commonwealth of Pennsylvania.

Section D. The Personnel Policies handbook, developed jointly by the District and the Association and approved by the Board of Directors, may be changed in accordance with applicable law.

Section E. If any provision of this Agreement or its application thereof shall be held invalid for any reason, such invalidity shall not affect the other provisions or other applications of this Agreement which can be given effect without the invalid provision or application and to that end, all provisions of the Agreement are deemed to be severable.

ARTICLE 8 — NON-DISCRIMINATION

The provisions of this Agreement shall be applied without regard to race, creed, religion, color, national origins, age, sex, marital status, political affiliation, sexual orientation, and place of residence.

ARTICLE 9 — DEDUCTION FRACTION

The fraction for determining deductions in each year of this Agreement for any Member of the Bargaining Unit will be 1/number of contracted days.

ARTICLE 10 — JUST CAUSE

Section A. No employee shall be reprimanded in writing or disciplined without just cause.

Whenever:

1. The District has made a prior determination that it is considering disciplinary action against any Member of the Bargaining Unit, and
2. The District requests a Member of the Bargaining Unit to appear before any member of the Administration, the District shall clearly inform the Member of the nature of the meeting, and, in the event that the meeting is accusatory in nature, the District shall advise the Member of her/his right to representation and shall provide opportunity for the Member to obtain such representation.

Section B. No tenured professional employee shall be dismissed without just cause. A tenured professional employee who has been served with a statement of charges upon which his/her proposed dismissal is based pursuant to Section 1127 of the School Code may file a grievance provided that he/she simultaneously files a written and notarized statement, in the form attached hereto and marked Exhibit A, irrevocably electing the grievance procedure rather than his/her procedural and substantive rights under the Public School Code with respect to his/her proposed dismissal.

1. Whenever any Member of the Bargaining Unit is required to appear before the Superintendent, Board, Committee, or member thereof, to answer written charges, the resolution of which may affect the continuation of any Member of the Bargaining Unit in his/her position or any salary or increment entitlements, Member shall be given prior written notice of the purpose for the meeting or interview and may have legal counsel of his/her own choice present to advise and represent Member during such meeting or interview. The Association shall have a representative present at this meeting or interview.
2. In the event that an employee is suspended pending a decision on said charges, the said employee shall receive his/her deferred or accrued earnings up to the date of any such suspension at the next following regular pay period. The District shall also maintain in force during the period of suspension the employee's medical, dental, and group life insurance.
3. If the employee is found innocent of all charges:
 - a. he/she shall be paid, at the first regular pay period immediately following the employee's return from suspension, all earnings which normally would have been paid during his/her suspension, and
 - b. he/she shall retain all seniority rights accrued during his/her suspension.
4. If the employee is found guilty of charges, he/she shall reimburse the District for the costs of medical, dental, and group life insurance coverage paid by the District during the period of employee's suspension.

Section C. The Association shall make a prompt designation of the representative to whom reference is made in Sections A and B (1) so as to facilitate the expeditious completion of the meeting or interview.

Section D. A Member of the Bargaining Unit shall have the right upon request to review the contents of his/her personnel file maintained by Allentown School District, except for confidential material submitted by other agencies and/or persons, personal references, academic credentials, pre-employment reviews and other similar documents. Such Member may have a representative of the Association accompany him/her during such review.

Section E. No material derogatory to a Bargaining Unit Member's conduct, service, character, or personality, following election to a position in the District, shall be placed in the personnel file maintained by the District unless the Member shall acknowledge in writing that he/she has had an opportunity to review such material with the express understanding that such signature in no way indicates agreement with the contents thereof. The Member of the Bargaining Unit shall also have the right to submit a written answer to such material and such reply shall be attached to the file copy.

Section F. Any criticism by an administrator or Board Member of a Member of the Bargaining Unit shall be made in confidence and not in the presence of students, parents, or at public gatherings unless the same is subject at a hearing provided by an applicable statute of this Commonwealth.

ARTICLE 11 — GRIEVANCE PROCEDURE

Section A. The parties hereto agree that an orderly and expeditious resolution of grievance arising out of the application and interpretation of the terms of this Agreement shall provide a four-level process for the disposition of any such grievance which process is set forth as follows:

EXHIBIT 21

From: [Francis Alexander Malofiy](#)
To: [John Freund, III](#); [John Freund, III](#); [Jody Mooney](#)
Cc: [Francis Alexander Malofiy](#); [AJ Fluehr](#)
Subject: Jason Moorehead - Immediate Decision Needed RE Jason Moorehead
Date: Monday, May 24, 2021 5:15:15 PM
Importance: High

Dear Mr. Freund,

It has now been nearly 5 months since Jason Moorehead was illegally suspended and held in limbo. The absolute failure of ASD to act has allowed Parker to abandon the District without apologizing or taking ownership or accountability for this mistake. To be clear, to date, there has been no apology for the defamation, even though there is now an interim Superintendent.

The fact of the matter is that the parties agree Mr. Moorehead cannot return to Allentown School District.

The only thing that makes sense for the two sides is to negotiate an exit, without protracted litigation. Make no mistake, I have absolutely no compunction about filing suit. However, if I do so, then the opportunity for an amicable resolution will disappear. I have also been patient as a professional courtesy to you Mr. Freund and the personal challenges you are facing. Mr. Moorehead and my office wish you nothing but the best and a quick recovery.

Please provide a response as to the status of Mr. Moorehead by no later than June 7, 2021—which will be the 5-month anniversary of his illegal suspension.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: Francis Alexander Malofiy
Sent: Tuesday, May 04, 2021 6:28 PM
To: John Freund III <Jef@kingspry.com>; Jody Mooney <jmooney@kingspry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>

Subject: Objection to the Loudermill Hearing

John and Jody,

We cannot proceed with the hearing and object to it because to date, you have failed to address the central problem. The District has not issued a full and unequivocal correction and retraction of the defamatory statements made about Mr. Moorehead on January 7 and 8 claiming he was “involved in” the Capitol Building riot. This needs to happen first.

There is no dispute that Mr. Moorehead was not at the Capitol Building and had no involvement in the riot. It has now been almost five months that the defamatory statements have not been retracted.

It is simply absurd, unfair, and highly prejudicial that you would illegally suspend him for 5 months based on a false reason, and then try to hold an alleged Loudermill hearing on pretextual nonsense without issuing a correction.

There will not be a Loudermill hearing unless the defamation is corrected; to do anything otherwise would be manifestly unfair and prejudicial to his rights. I also note that the CBA, Article 10 prohibits public criticism of a teacher: “Any criticism by an administrator or Board Member of a Member of the Bargaining Unit shall be made in confidence and not in the presence of students, parents, or at public gatherings.”

The District has done nothing to address, correct, rectify, or mitigate any of these extremely serious violations of his Constitutional and Contractual rights. We therefore object to any attempt to hold a sham Loudermill hearing and we object to your characterization of what you have scheduled as a Loudermill hearing.

Let’s be clear: Mr. Moorehead cannot go back to ASD. The District’s actions and inactions have made this impossible. Instead of attempting to hold a belated and sham Loudermill hearing to try to unring a bell, the District should instead be focused on finding an amicable exit strategy.

Francis Malofiy

EXHIBIT 22



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

July 16, 2021

Via Electronic Mail &
First Class Mail

Mr. Jason Moorehead

RE: Return to Teaching Assignment

Dear Mr. Moorehead,

After fully investigating your involvement in the events of January 6, 2021, in Washington D.C., the district has concluded that your presence at the January 6th gathering did not violate School Board policy 419 relating to teacher non-school activities. The district does conclude, however, that you violated the district's acceptable use policy by using your district-owned electronic equipment for non-school purposes.

Also, the district finds that your posting of photographs and memes making light of the vandalism and rioting occurring at the Capitol Building and your comment, "hilarious", was distasteful, insensitive, inconsiderate, thoughtless, uncaring, since what you posted was not considered funny to many, especially in the ASD community in which you serve as a history teacher. You also stated, "wrong on so many levels" regarding the Capitol as being insured. Your comments reflect your disregard for how your words impact the community of which you serve. Both of your comments are unbecoming of a history teacher, cavalier, dismissive of the serious affront that was committed on January 6th to our national institutions.

Therefore, please be advised of the following:

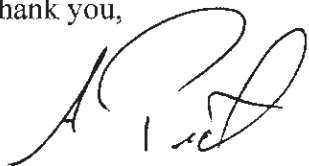
1. This memo serves as a directive that you are to use the district electronic equipment for school purposes as directed by the district policy. This is a written warning for the inappropriate use of district electronic equipment to be placed in your personnel file.
2. You are expected to teach according to the Pennsylvania Public School Code and Standards, implement the ASD curriculum with fidelity, and avoid offending the morals of the community of which you serve and that may set a bad example for students.

3. You will be required to undergo training in cultural competencies related to the history of African Americans and Hispanics in U.S. History.

4. Failure to adhere to these requirements may result in further disciplinary action including the possibility of termination.

In moving forward, you are returned to a teaching assignment. You will be contacted by Human Resources with further information regarding your teaching location prior to the start of the school year. Please confirm your receipt of this letter by contacting me, Mr. Pidgeon, in writing no later than Friday, July 30, 2021.

Thank you,

A handwritten signature in black ink, appearing to read 'A. Pidgeon', written in a cursive style.

Anthony Pidgeon
Executive Director of Human Resources
Allentown School District

EXHIBIT 23



FRANCIS ALEXANDER LLC

JULY 30, 2021

John E. Freund III, Esquire
KING, SPRY, HERMAN, FREUND & FAUL LLC
One West Broad Street | Suite 700
Bethlehem, PA 18018
T: (610) 332-0390
F: (610) 332-0314
E: jef@kingspry.com
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Response to Letter Reinstating Jason Moorehead

Dear Mr. Freund,

As we discussed on the phone, Mr. Moorehead is rejecting the District's proposal. The proposal does nothing to correct the false information that was disseminated about him. Furthermore, he was falsely labeled a racist, a bigot, and an "insurrectionist." He is not going to be forced to take diversity training classes as if he did something wrong. The truth is that the District has made it impossible for Mr. Moorehead to return to the school district. He would be returning to the most hostile working environment imaginable in the current political climate.

You told me that you did not think that liability was clear. You also said you thought that to prove a stigma plus defamation claim that we had to show termination. These are not correct.

First, his due process property interest claim is clear cut. The Dunmore cases I have shown you hold that it is flatly illegal to suspend a government employee without notice, even with pay, where a CBA states they can only be disciplined for just cause.

Second, if nothing else, he has clear-cut First Amendment retaliation claims for infringing on his rights to speech, assembly, and association. He was suspended for political reasons, and then kept suspended for political reasons even though the District knew he wasn't at the Capitol Building. The fact that he was falsely accused of being involved in an infamous act in American history, an accusation Defendants admit is false and have deliberately failed to correct, is damning and constitutes illegal retaliation all by itself.

Third, his stigma plus claim is clear cut for defamation. It does not matter that the District did not terminate him. All Mr. Moorehead needs to show is a false statement (he can show a most outrageous false statement which has not been corrected) *plus* a deprivation of an additional right or interest. He can show many pluses, although he only needs one: deprivation of ability to pursue his occupation due to egregious and public nature of the slander, violation of his property interest in not being suspended without notice, violation of the CBA prohibition on public criticism of teachers, violation of school policy guaranteeing free expression and affiliation, and violation of Constitutional rights guaranteeing free expression, assembly, and affiliation. See Good v. City of Sunbury, 352 F. App'x 688, 691-92 (3d Cir. 2009) (listing previously identified, "tangible" losses as including "deprivation of the liberty to pursue a calling or occupation; an injury to plaintiff's reputation while in the exercise of her constitutional right

to free speech; and a constructive discharge and consequent damage to plaintiff's ability to earn a living[]" (internal quotation marks and citations omitted)).

Indeed, the Third Circuit has held that a stigma plus exists where the governmental defendant used the "exercise of [plaintiff's] First Amendment right of speech to initiate a baseless prosecution." Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 797 (3d Cir. 2000).

In sum, trying to reinstate him, after leaving him suspended for over half a year following destroying his reputation and ability to teach in the community, is not going to fix this.

Mr. Moorehead is asking for \$1 million and an unequivocal correction of the record about the false statement. You have 7 days to respond.

With every good wish, I am,

A handwritten signature in red ink, appearing to be the name 'Francis Malofiy'.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT 24



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

August 9, 2021

Sent via Email, First Class Mail, and
Certified Mail

Jason Moorehead
5360 Celia Drive
Allentown, PA 18106

RE: Return to teaching assignment

Dear Mr. Moorehead:

I have not heard from you following my letter of July 16, 2021, in which I asked you to get back to me by July 30, 2021. Because the start of school is only weeks away, we must know whether you will return to teaching for the upcoming year.

It is therefore essential that we hear from you definitively on whether or not you intend to return to teaching in the Allentown School District no later than the end of business on Friday, August 13, 2021.

If you do not intend to return, your salary and benefits will be dismissed. If I do not hear from you by August 13, 2021, it will be assumed that you do not intend to return, and your salary and your benefits will be discontinued pending formal termination of your employment.

Very truly yours,

A handwritten signature in black ink, appearing to read "A. Pidgeon", is written over the typed name.

Anthony Pidgeon
Executive Director of Human Resources

cc: Jennifer Ramos, Acting Superintendent

EXHIBIT 25

August 16, 2021

Via Electronic Mail

Mr. Anthony Pidgeon

RE: Response to letter dated August 8, 2021

Dear Mr. Pidgeon,

There is no way that I can return to the Allentown School District given the way the District has publicly vilified and defamed me, poisoned the community against me, put me and my family's safety in jeopardy, and never corrected the record.

I was a 17-year teacher with no discipline or complaints. Yet, on January 7, 2021, without even speaking with me, the District publicly and falsely claimed that I participated in the violent riots that took place at the US Capitol Building on January 6th, and suspended me indefinitely. The District told the media that the basis for my removal was that I had engaged in un-American and subversive conduct. This is flatly unconstitutional and factually false. I was nowhere near the Capitol Building and did nothing wrong.

I was given no notice or chance to defend myself, which is also unconstitutional. These attacks on myself also directly violated the Collective Bargaining Agreement which only allow teachers to be disciplined for just cause and prohibits the District from publicly criticizing teachers. Worse, the District has known since January 8th that I was never near the riots, yet they have deliberately remained silent and refused to correct the record.

As a result of the District's inexcusable conduct and omissions, I was verbally attacked at school board meetings and slandered mercilessly on social media. My private address and phone number was posted. ***I received death threats and other threatening phone calls. My wife and kids were scared senseless.*** We had to install security cameras and file police reports. This has turned my world upside down.

Because of the District, the community and school think that I participated in a dark moment in American history and they hate me for it. Google my name and look what pops up.

You now send me a letter which pretends as if the last 7 months did not happen. Your letter only states that I will be reinstated to a different school if I take sensitivity training—as if I did something wrong. I cannot state strongly enough that I reject what you and the District are trying to do.

You cannot pretend as if you did not illegally destroy my life and career.

For the last 17 years, I have been a dedicated and effective teacher in the Allentown School District. Raub Middle School, its faculty, students, and community have been like my second home. I have poured my soul into being a part of the Raub Family. While many look to leave the district to teach in other settings, I have jumped at opportunities to become even more involved in the lives of our students. As a teacher, multiple sport coach, advisor to numerous clubs, 21st century participant, and

summer school teacher, I have always tried to make a positive impact on the lives of my students. My record speaks for itself. I have had solid teacher observations, a clean professional file, multiple requests to partner with colleges and universities in taking on student teachers, and my own colleagues have chosen me as the team leader. I am proud to say that in all those years, I have not had one complaint filed by a student or parent or had one disciplinary action against me from human resources.

Every relationship is built upon trust. You destroyed the trust I had with my students, parents, and the community. You have made it impossible for me to trust the District; how can I return to an employer who has defamed me, will not correct the record, and has no concern that it illegally violated my rights? You have created a hostile work environment.

Accountability matters. The District and Board need to publicly post an apology on the website and social media unequivocally correcting the record and clearing my name, and send the apology to the newspapers and news stations in Allentown. They also need to send an email to all students, parents, teachers, administrators, and staff doing the same. There also needs to be mandatory training for all staff and Board Members on free speech and due process so that this never happens again.

I have asked for accountability for 7 months but the District has failed to correct the false statements that destroyed my life, making that harm permanent.

Jason Moorehead

Cc: Jen Ramos

EXHIBIT 26

From: [Pidgeon, Anthony](#)
To: [Francis Alexander Malofiy](#)
Cc: [AJ Fluehr](#)
Subject: Re: COMMENCEMENT OF LAWSUIT - JASON MOOREHEAD v. ALLENTOWN SCHOOL DISTRICT, THE BOARD, and Mr. Pidgeon (SERVED)
Date: Thursday, September 09, 2021 5:53:42 PM

Received.

TPidgeon's iPhone

On Sep 9, 2021, at 5:22 PM, Francis Alexander Malofiy <francis@francisalexander.com> wrote:

Dear Mr. Pidgeon,

I wanted to be sure that you received this email, the attached lawsuit, and the message below.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com<<mailto:francis@francisalexander.com>>

From: Francis Alexander Malofiy <francis@francisalexander.com>
Sent: Thursday, September 09, 2021 4:51 PM
To: John Freund, III <jef@KingSpry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>
Subject: COMMENCEMENT OF LAWSUIT - JASON MOOREHEAD v. ALLENTOWN SCHOOL DISTRICT, THE BOARD, and Mr. Pidgeon (SERVED)

Dear Mr. Freund,

Attached please find the Writ of Summons which was filed against Allentown School District, The Board, and Mr. Pidgeon.

Any action taken against Mr. Moorehead by the District will only be viewed as retaliatory and punitive.

Please have your clients behave accordingly.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063

T: (215) 500-1000

F: (215) 500-1005

E: francis@francisalexander.com<<mailto:francis@francisalexander.com>>

<2021.09.09 - MOOREHEAD v. ALLENTOWN, ET AL. - Cover Sheet (DOCKET)(SERVED).pdf>

<2021.09.09 - MOOREHEAD v. ALLENTOWN, ET AL. - Praeipie to Issue Writ of Summons and Writ of Summons (DOCKET)(SERVED).pdf>

<2021.09.09 - MOOREHEAD v. ALLENTOWN, ET AL. - Jury Demand (DOCKET)(SERVED).pdf>

EXHIBIT 27



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

September 13, 2021

Sent Via Email, First Class Mail and Certified Mail

Jason Moorehead
5360 Celia Drive
Allentown, Pa 18106

RE: Notice of Loudermill hearing – September 17, 2021

Dear Mr. Moorehead:

On July 16, 2021, I sent you a letter which, among other things, informed you that you would be returned to a teaching assignment at Allentown School District at the start of the 2021-22 school year. You were directed to confirm your receipt of this letter in writing no later than July 30, 2021. No response was received from you on or before July 30, 2021.

On August 4, 2021, a second letter was sent to you, directing that you communicate definitively whether you will or will not return to teaching at Allentown School District no later than August 13, 2021.

On August 16, 2021, you responded by email, in which you stated that you did not believe that there is any way you can return to the Allentown School District. However, this letter did not state that you were resigning from your position as a teacher.

As of today, you have not appeared to attend any of the required in-service days that are scheduled at the beginning of the work year for teachers, and you have not been present when the students returned last week to the buildings and classes. Therefore, you leave me with no choice but to believe that you do not intend to return to work although you have not resigned. Essentially, this means that you failed to call to report your absence and you failed to report to work for seven consecutive workdays.

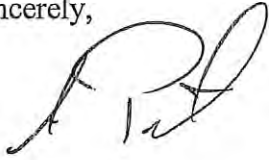
The purpose of this letter is to provide you with an opportunity to meet with me to provide any information you would like to be considered by the Allentown School administration before any recommendation is made that could adversely affect your continued employment, pay and benefits. Although the meeting is not as formal as a court or school board hearing, you may bring an attorney or a union representative with you to the meeting.

The time and place of the meeting that will serve as your *Loudermill* hearing is:

Friday, September 17, 2021, at 2:00 PM, at the Allentown School District Administration Center, 31 S. Penn Street, Allentown, Pennsylvania 18102.

Please confirm your attendance at this meeting no later than Thursday, September 16, 2021, at 3:45 p.m., by calling or emailing me. Phone number 484-765-4129, email, pidgeona@allentownsd.org

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Pidgeon', written in a cursive style.

Anthony Pidgeon
Executive Director of Human Resources

EXHIBIT 28

From: [Francis Alexander Malofiy](#)
To: [John Freund, III](#)
Cc: [Francis Alexander Malofiy](#); [AJ Fluehr](#)
Subject: Re: J. Moorehead - 09-14-2021
Date: Thursday, September 16, 2021 2:53:57 PM

Dear John,

This is the first time me or my client has been made aware of Pidgeon's letter.

I really don't know why the District and Pidgeon continue to directly contact my client when they know that I am representing Jason and all communication to my client should be directed to my attention. It would be one thing if this was the first time, but this happens every time. And, every time I don't even get the consideration of a courtesy copy until days, sometimes weeks, sometimes never. Making it worse is the unilaterally scheduled Loudermill hearing, providing me only one day from receipt to respond, and demanding that my client appear within 2 days for the hearing.

Let me assure you that there is no way we will be able to make the Loudermill hearing on such short, deficient, and untimely notice. I am extremely busy this week and Friday at 2pm is no good. I will be in court at that time.

I will follow up next week to suggest alternative dates and respond in substance to the letter and the fanciful event which you request our participation and which you characterize as a "Loudermill Hearing".

Francis
215-500-1000

On Sep 15, 2021, at 5:00 PM, John Freund, III <jef@KingSpry.com> wrote:

Francis,

Forgive the delay in getting this to you, but I just got the copy.

Your client should have gotten his notice a couple days ago. I suspect he has already advised you.

Since you have already indicated that your client does not intend to return to work and he has not reported to work, it is reasonable to assume that he will not be participating in the Loudermill Hearing.

The courtesy of confirming his intentions would be appreciated.

In any event the district will be prepared to conduct the Loudermill process at 2:00 PM on Friday if he desires to participate.

If it is the case that Mr. Moorehead has abandoned his position, notice of hearing and charges will be issued for the termination of his employment and his pay will be stopped.

Should Mr. Moorehead wish to submit his resignation, the termination process and the required reporting to the Department of Education could be avoided.

Looking forward to your reply,

John

<image002.jpg>**John E. Freund III, Partner** | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
www.kingspry.com | [CV](#) | [Sign-up for our news alerts](#)

Tami Mikulecky, Paralegal	tlm@kingspry.com
Michelle Spencer, Pa.C.P./Paralegal	mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator	tjohnson@kingspry.com

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that the federal tax advice (if any) contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transactions or matter addressed herein.

THE INFORMATION CONTAINED IN THIS COMMUNICATION IS A TRANSMISSION FROM THE LAW FIRM OF KING SPRY HERMAN FREUND & FAUL AND IS INFORMATION PROTECTED BY THE ATTORNEY/CLIENT AND/OR ATTORNEY/WORK PRODUCT PRIVILEGE. IT IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE RECIPIENT(S) NAMED ABOVE, AND THE PRIVILEGES ARE NOT WAIVED BY VIRTUE OF THIS HAVING BEEN SENT BY ELECTRONIC MAIL. IF THE PERSON ACTUALLY RECEIVING THIS COMMUNICATION, OR ANY OTHER READER OF THIS COMMUNICATION, IS NOT THE NAMED RECIPIENT, ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND DELETE THE ORIGINAL MESSAGE FROM YOUR SYSTEM. THANK YOU.

<Jason Moorehead 09-14-2021.pdf>

EXHIBIT 29

EXHIBIT A

ASD Allentown
SCHOOL DISTRICT

31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

September 13, 2021

Sent Via Email, First Class Mail and Certified Mail

Jason Moorehead
5360 Celia Drive
Allentown, Pa 18106

RE: Notice of Loudermill hearing – September 17, 2021

Dear Mr. Moorehead:

On July 16, 2021, I sent you a letter which, among other things, informed you that you would be returned to a teaching assignment at Allentown School District at the start of the 2021-22 school year. You were directed to confirm your receipt of this letter in writing no later than July 30, 2021. No response was received from you on or before July 30, 2021.

On August 4, 2021, a second letter was sent to you, directing that you communicate definitively whether you will or will not return to teaching at Allentown School District no later than August 13, 2021.

On August 16, 2021, you responded by email, in which you stated that you did not believe that there is any way you can return to the Allentown School District. However, this letter did not state that you were resigning from your position as a teacher.

As of today, you have not appeared to attend any of the required in-service days that are scheduled at the beginning of the work year for teachers, and you have not been present when the students returned last week to the buildings and classes. Therefore, you leave me with no choice but to believe that you do not intend to return to work although you have not resigned. Essentially, this means that you failed to call to report your absence and you failed to report to work for seven consecutive workdays.

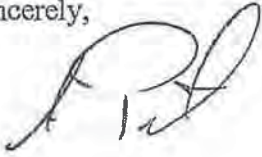
The purpose of this letter is to provide you with an opportunity to meet with me to provide any information you would like to be considered by the Allentown School administration before any recommendation is made that could adversely affect your continued employment, pay and benefits. Although the meeting is not as formal as a court or school board hearing, you may bring an attorney or a union representative with you to the meeting.

The time and place of the meeting that will serve as your *Loudermill* hearing is:

Friday, September 17, 2021, at 2:00 PM, at the Allentown School District Administration Center, 31 S. Penn Street, Allentown, Pennsylvania 18102.

Please confirm your attendance at this meeting no later than Thursday, September 16, 2021, at 3:45 p.m., by calling or emailing me. Phone number 484-765-4129, email, pidgeona@allentownsd.org

Sincerely,

A handwritten signature in black ink, appearing to read 'AP', written in a cursive style.

Anthony Pidgeon
Executive Director of Human Resources

EXHIBIT B

12

From: John Freund, III jef@kingspry.com
Subject: RE: J. Moorehead - 09-14-2021
Date: Sep 17, 2021 at 3:59:03 PM
To: Francis Alexander Malofiy
francis@francisalexander.com
Cc: AJ Fluehr aj@francisalexander.com

Dear Francis,

As a courtesy to you we will reschedule the Loudermill hearing originally scheduled for 2:00 PM to **Wednesday, September 22, 2021 at 1:00 PM**. As a convenience to all, the hearing will take place in our offices in the 6th floor conference room, which will allow for social distancing. If you prefer you and your client may appear by Zoom.

Since both you and your client have stated that he has no intent to return, we would appreciate the courtesy of advance notice if you do not intend to appear.

We will provide you with a copy of any transcript and exhibits.

Best regards,

John



John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA
18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com

www.kingspry.com | [CV](#) | [Sign-up for our news alerts](#)

Tami Mikulecky, Paralegal t1m@kingspry.com
Michelle Spencer, Pa.C.P./Paralegal mcawthern@kingspry.com
Tracy Johnson, Compliance Administrator tjohnson@kingspry.com

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that the federal tax advice (if any) contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transactions or matter addressed herein.

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EXHIBIT C

C

Brian Taylor

From: John Freund, III
Sent: Wednesday, September 15, 2021 5:01 PM
To: Francis Alexander Malofiy
Subject: FW: J. Moorehead - 09-14-2021
Attachments: Jason Moorehead 09-14-2021.pdf

Francis,

Forgive the delay in getting this to you, but I just got the copy.
Your client should have gotten his notice a couple days ago. I suspect he has already advised you.

Since you have already indicated that your client does not intend to return to work and he has not reported to work, it is reasonable to assume that he will not be participating in the Loudermill Hearing.
The courtesy of confirming his intentions would be appreciated.

In any event the district will be prepared to conduct the Loudermill process at 2:00 PM on Friday if he desires to participate.

If it is the case that Mr. Moorehead has abandoned his position, notice of hearing and charges will be issued for the termination of his employment and his pay will be stopped.

Should Mr. Moorehead wish to submit his resignation, the termination process and the required reporting to the Department of Education could be avoided.

Looking forward to your reply,

John



John E. Freund III, Partner | King, Spry, Herman, Freund & Faul LLC
One West Broad Street, Suite 700 | Bethlehem, PA 18018
(610) 332-0390 | (610) 332-0314 - FAX | jef@kingspry.com
www.kingspry.com | [CV](#) | [Sign-up for our news alerts](#)

Tami Mikulecky, Paralegal
Michelle Spencer, Pa.C.P./Paralegal
Tracy Johnson, Compliance Administrator

tjm@kingspry.com
mcauthern@kingspry.com
tjohnson@kingspry.com

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EXHIBIT D



August 16, 2021

Via Electronic Mail

Mr. Anthony Pidgeon

RE: Response to letter dated August 8, 2021

Dear Mr. Pidgeon,

There is no way that I can return to the Allentown School District given the way the District has publicly vilified and defamed me, poisoned the community against me, put me and my family's safety in jeopardy, and never corrected the record.

I was a 17-year teacher with no discipline or complaints. Yet, on January 7, 2021, without even speaking with me, the District publicly and falsely claimed that I participated in the violent riots that took place at the US Capitol Building on January 6th, and suspended me indefinitely. The District told the media that the basis for my removal was that I had engaged in un-American and subversive conduct. This is flatly unconstitutional and factually false. I was nowhere near the Capitol Building and did nothing wrong.

I was given no notice or chance to defend myself, which is also unconstitutional. These attacks on myself also directly violated the Collective Bargaining Agreement which only allow teachers to be disciplined for just cause and prohibits the District from publicly criticizing teachers. Worse, the District has known since January 8th that I was never near the riots, yet they have deliberately remained silent and refused to correct the record.

As a result of the District's inexcusable conduct and omissions, I was verbally attacked at school board meetings and slandered mercilessly on social media. My private address and phone number was posted. ***I received death threats and other threatening phone calls. My wife and kids were scared senseless.*** We had to install security cameras and file police reports. This has turned my world upside down.

Because of the District, the community and school think that I participated in a dark moment in American history and they hate me for it. Google my name and look what pops up.

You now send me a letter which pretends as if the last 7 months did not happen. Your letter only states that I will be reinstated to a different school if I take sensitivity training—as if I did something wrong. I cannot state strongly enough that I reject what you and the District are trying to do.

You cannot pretend as if you did not illegally destroy my life and career.

For the last 17 years, I have been a dedicated and effective teacher in the Allentown School District. Raub Middle School, its faculty, students, and community have been like my second home. I have poured my soul into being a part of the Raub Family. While many look to leave the district to teach in other settings, I have jumped at opportunities to become even more involved in the lives of our students. As a teacher, multiple sport coach, advisor to numerous clubs, 21st century participant, and

summer school teacher, I have always tried to make a positive impact on the lives of my students. My record speaks for itself. I have had solid teacher observations, a clean professional file, multiple requests to partner with colleges and universities in taking on student teachers, and my own colleagues have chosen me as the team leader. I am proud to say that in all those years, I have not had one complaint filed by a student or parent or had one disciplinary action against me from human resources.

Every relationship is built upon trust. You destroyed the trust I had with my students, parents, and the community. You have made it impossible for me to trust the District; how can I return to an employer who has defamed me, will not correct the record, and has no concern that it illegally violated my rights? You have created a hostile work environment.

Accountability matters. The District and Board need to publicly post an apology on the website and social media unequivocally correcting the record and clearing my name, and send the apology to the newspapers and news stations in Allentown. They also need to send an email to all students, parents, teachers, administrators, and staff doing the same. There also needs to be mandatory training for all staff and Board Members on free speech and due process so that this never happens again.

I have asked for accountability for 7 months but the District has failed to correct the false statements that destroyed my life, making that harm permanent.

Jason Moorehead

Cc: Jen Ramos

EXHIBIT E

(E)



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

August 9, 2021

Sent via Email, First Class Mail, and
Certified Mail

Jason Moorehead
5360 Celia Drive
Allentown, PA 18106

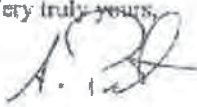
RE: Return to teaching assignment

Dear Mr. Moorehead:

I have not heard from you following my letter of July 16, 2021, in which I asked you to get back to me by July 30, 2021. Because the start of school is only weeks away, we must know whether you will return to teaching for the upcoming year.

It is therefore essential that we hear from you definitively on whether or not you intend to return to teaching in the Allentown School District no later than the end of business on Friday, August 13, 2021.

If you do not intend to return, your salary and benefits will be dismissed. If I do not hear from you by August 13, 2021, it will be assumed that you do not intend to return, and your salary and your benefits will be discontinued pending formal termination of your employment.

Very truly yours,


Anthony Pidgeon
Executive Director of Human Resources

cc: Jennifer Ramos, Acting Superintendent

EXHIBIT F



FRANCIS ALEXANDER LLC

(E)

JULY 30, 2021

John E. Freund III, Esquire
KING, SPRY, HERMAN, FREUND & FAUL LLC
One West Broad Street | Suite 700
Bethlehem, PA 18018
T: (610) 332-0390
F: (610) 332-0314
E: jef@kingspry.com
VIA EMAIL

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Response to Letter Reinstating Jason Moorehead

Dear Mr. Freund,

As we discussed on the phone, Mr. Moorehead is rejecting the District's proposal. The proposal does nothing to correct the false information that was disseminated about him. Furthermore, he was falsely labeled a racist, a bigot, and an "insurrectionist." He is not going to be forced to take diversity training classes as if he did something wrong. The truth is that the District has made it impossible for Mr. Moorehead to return to the school district. He would be returning to the most hostile working environment imaginable in the current political climate.

You told me that you did not think that liability was clear. You also said you thought that to prove a stigma plus defamation claim that we had to show termination. These are not correct.

First, his due process property interest claim is clear cut. The Dunmore cases I have shown you hold that it is flatly illegal to suspend a government employee without notice, even with pay, where a CBA states they can only be disciplined for just cause.

Second, if nothing else, he has clear-cut First Amendment retaliation claims for infringing on his rights to speech, assembly, and association. He was suspended for political reasons, and then kept suspended for political reasons even though the District knew he wasn't at the Capitol Building. The fact that he was falsely accused of being involved in an infamous act in American history, an accusation Defendants admit is false and have deliberately failed to correct, is damning and constitutes illegal retaliation all by itself.

Third, his stigma plus claim is clear cut for defamation. It does not matter that the District did not terminate him. All Mr. Moorehead needs to show is a false statement (he can show a most outrageous false statement which has not been corrected) *plus* a deprivation of an additional right or interest. He can show many pluses, although he only needs one: deprivation of ability to pursue his occupation due to egregious and public nature of the slander, violation of his property interest in not being suspended without notice, violation of the CBA prohibition on public criticism of teachers, violation of school policy guaranteeing free expression and affiliation, and violation of Constitutional rights guaranteeing free expression, assembly, and affiliation. See Good v. City of Sunbury, 352 F. App'x 688, 691-92 (3d Cir. 2009) (listing previously identified, "tangible" losses as including "deprivation of the liberty to pursue a calling or occupation; an injury to plaintiff's reputation while in the exercise of her constitutional right

to free speech; and a constructive discharge and consequent damage to plaintiff's ability to earn a living[]" (internal quotation marks and citations omitted)).

Indeed, the Third Circuit has held that a stigma plus exists where the governmental defendant used the "exercise of [plaintiff's] First Amendment right of speech to initiate a baseless prosecution." Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 797 (3d Cir. 2000).

In sum, trying to reinstate him, after leaving him suspended for over half a year following destroying his reputation and ability to teach in the community, is not going to fix this.

Mr. Moorehead is asking for \$1 million and an unequivocal correction of the record about the false statement. You have 7 days to respond.

With every good wish, I am,

A handwritten signature in black ink, appearing to be "F. Malofiy", written in a cursive style.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT G

6

ASD Allentown SCHOOL DISTRICT

31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

July 16, 2021

Via Electronic Mail &
First Class Mail

Mr. Jason Moorehead

RE: Return to Teaching Assignment

Dear Mr. Moorehead,

After fully investigating your involvement in the events of January 6, 2021, in Washington D.C., the district has concluded that your presence at the January 6th gathering did not violate School Board policy 419 relating to teacher non-school activities. The district does conclude, however, that you violated the district's acceptable use policy by using your district-owned electronic equipment for non-school purposes.

Also, the district finds that your posting of photographs and memes making light of the vandalism and rioting occurring at the Capitol Building and your comment, "hilarious", was distasteful, insensitive, inconsiderate, thoughtless, uncaring, since what you posted was not considered funny to many, especially in the ASD community in which you serve as a history teacher. You also stated, "wrong on so many levels" regarding the Capitol as being insured. Your comments reflect your disregard for how your words impact the community of which you serve. Both of your comments are unbecoming of a history teacher, cavalier, dismissive of the serious affront that was committed on January 6th to our national institutions.

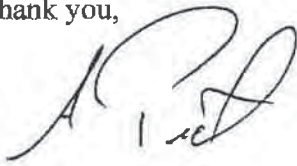
Therefore, please be advised of the following:

1. This memo serves as a directive that you are to use the district electronic equipment for school purposes as directed by the district policy. This is a written warning for the inappropriate use of district electronic equipment to be placed in your personnel file.
2. You are expected to teach according to the Pennsylvania Public School Code and Standards, implement the ASD curriculum with fidelity, and avoid offending the morals of the community of which you serve and that may set a bad example for students.

3. You will be required to undergo training in cultural competencies related to the history of African Americans and Hispanics in U.S. History.
4. Failure to adhere to these requirements may result in further disciplinary action including the possibility of termination.

In moving forward, you are returned to a teaching assignment. You will be contacted by Human Resources with further information regarding your teaching location prior to the start of the school year. Please confirm your receipt of this letter by contacting me, Mr. Pidgeon, in writing no later than Friday, July 30, 2021.

Thank you,

A handwritten signature in black ink, appearing to read 'A. Pidgeon', written in a cursive style.

Anthony Pidgeon
Executive Director of Human Resources
Allentown School District

EXHIBIT 30

Jan. 6 - Rally in DC

Jan. 7 - Parker statement and suspension

Jan. 8 - Interview where he says not involved, and Morning Call article

Jan. 21 - Letter from Francis Alexander

Jan. 26 - Additional Letter

Jan. 28 - Additional Letter

April 1 - Additional Letter

April 9 - First fake Loudermill Notice

May 4 - Objection to Loudermill

May 5 - First Fake Loudermill Hearing

May 24 - Additional Letter asking for Status of Suspension

July 16 - Pidgeon reinstatement letter

July 30 - Response to Pidgeon

Aug 16 - Jason wrote letter to District

Sept. 1 - Jason's pay is cancelled

Sept. 9 - Lawsuit filed, and sent to Pidgeon and Freund

Sept. 13 - Second Fake Loudemill Notice

Sept. 22 - Second Fake Loudermill Hearing

EXHIBIT 31

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ALLENTOWN SCHOOL DISTRICT

IN RE: :
: :
JASON MOOREHEAD :

LOUDERMILL HEARING

Held in the law offices of King, Spry,
Herman, Freund and Faul, One West Broad Street,
Suite 700, Bethlehem, Pennsylvania, on Wednesday,
September 22, 2021, commencing at 1:29 p.m.,
stenographically reported by James P. Gallagher III,
Registered Diplomate Reporter.

* * *
GALLAGHER REPORTING & VIDEO, LLC
Mill Run Office Center
1275 Glenlivet Drive, Suite 100
Allentown, PA 18106
(800) 366-2980 / (610) 439-0504
Gallagherreporting@verizon.net

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APPEARANCES:

KING, SPRY, HERMAN, FREUND & FAUL
By: BRIAN TAYLOR, ESQ.
One West Broad Street
Suite 700
Bethlehem, PA 18015
Btaylor@kingspry.com
-- For Allentown School District

(Via Zoom)
FRANCIS ALEXANDER, LLC
By: FRANCIS MALOFIY, ESQ.
280 N. Providence Road, Suite 1
Media, PA 19063
Francis@francisalexander.com
-- For Jason Moorehead

ALSO PRESENT:

ANTHONY PIDGEON
Executive Director of Human Resources of
Allentown School District

ALSO PRESENT VIA ZOOM:

JASON MOOREHEAD
A.J. FLUEHR, ESQ.

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INDEX TO EXHIBITS

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A	Letter of 9/13/21 from Pidgeon	31
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(Jason Moorhead exhibits were not identified on the record, but are attached en masse.)

1

2

3

MR. TAYLOR: My name is Brian Taylor.

4

I serve as special counsel to the Allentown School

5

District. We're conducting this hearing at the

6

request of the School District. We are here today

7

at the offices of King Spry located at One West

8

Broad Street, Bethlehem, Pennsylvania. With us here

9

today is Anthony Pidgeon, Executive Director of

10

Human Resources for the School District, and the

11

court reporter who will make a stenographic record

12

of the proceeding.

13

Is Mr. Moorehead in attendance?

14

MR. MALOFIY: Mr. Moorehead is here.

15

And this is Francis Alexander Malofiy with the law

16

firm of Francis Alexander. With me here today is

17

Mr. Moorehead, along with counsel, A.J. Fluehr.

18

MR. TAYLOR: And this hearing is being

19

conducted via Zoom.

20

MR. MALOFIY: That's correct.

21

MR. TAYLOR: And, Mr. Moorehead, he's

22

aware that he had the opportunity to attend and

23

participate in person?

24

MR. MALOFIY: Yes. We are aware of

25

that. But we are here -- we are here to state our

1 position, and to be part of this Loudermill process
2 to the extent we can.

3 MR. TAYLOR: Okay. What is your
4 objection to the hearing?

5 MR. MALOFIY: Well, look. I mean,
6 there's been extensive communications with the
7 District with Mr. Pidgeon, as well as Mr. Freund,
8 objecting to the process, not only the initial
9 process of the initial Loudermill hearing which we
10 see as a sham, and in violation of due process, the
11 1st and 14th Amendment, and in violation of his
12 constitutional rights. Also, Mr. Moorehead is not
13 going to participate in this Loudermill process and
14 legitimize a clearly unlawful proceeding not
15 grounded in law, not grounded in fact, and not
16 grounded in what's just and what's appropriate, and
17 what's required under the law.

18 MR. TAYLOR: Can I interrupt real
19 quick? You said he's not going to participate? Is
20 he going to participate, yes or no?

21 MR. MALOFIY: He is participating by
22 way of counsel making an objection. And that's
23 appropriate and that's required under the law --

24 MR. TAYLOR: Okay.

25 MR. MALOFIY: -- to state our

1 objection to the process, and why we have an issue
2 with it.

3 This Loudermill hearing as well as the
4 prior one is nothing more than a pretextual
5 manufacture of a false record. And the stated
6 reasons in the initial Loudermill and the stated
7 reasons in this Loudermill are different. It's a
8 shifting goal post as to why he was allegedly
9 suspended in the first place.

10 You know a Loudermill notice has to be
11 clear on what he had done wrong, and the charges
12 against him. And that was not provided. And then
13 at the Loudermill hearings themselves they were --
14 there was a shifting goal post in what he had done
15 wrong.

16 There was no wrong conduct by Jason
17 Moorehead at any stage at any step in time. And
18 this is -- what this has become is manufactured
19 hostility by and through the District, manufactured
20 hostility towards Mr. Moorehead by the community
21 through members of the School Board, through
22 members -- through counsel to the School Board, and
23 through the -- through the school itself, including
24 Mr. Pidgeon.

25 I think that in order to really get a

1 grasp of this it's necessary to establish a
2 timeline. We see the timeline much differently than
3 you see the timeline.

4 We've tried to address this issue,
5 but, it has really fallen on deaf ears.

6 Let me just take a step back. Mr.
7 Moorehead was a teacher of 17 years, with an
8 impeccable record. He had done nothing wrong. He
9 had not taught in any way to hurt anybody. There
10 was no objections to his teaching, to his style, or
11 that which he had done. And then all of a sudden on
12 January 6 because he had --

13 MR. TAYLOR: Mr. Malofiy, I would
14 suggest that he will be provided an opportunity at
15 the end of the hearing to present his side.

16 MR. MALOFIY: He's not presenting his
17 side. We're just objecting and stating the reasons
18 why.

19 MR. TAYLOR: Okay.

20 MR. MALOFIY: So an objection is
21 actually required by the law, and if we are going
22 to -- it's our legal position that this is an unjust
23 and unlawful and fake Loudermill hearing. We have
24 to show the reasons why in our objection, not
25 respond to and legitimize a Loudermill hearing which

1 we think clearly from the start is predicated on an
2 incomplete and an unfair timeline, and it is a fake
3 Loudermill hearing. We have to state the factual
4 reasons for that in our objection by law.

5 MR. TAYLOR: I understand. I just
6 want to make it clear you will have the opportunity
7 to respond at the end.

8 MR. MALOFIY: Right. But this is a
9 legal objection, and it's also the grounds for the
10 legal objection.

11 Let's be clear here. And you can look
12 at our documents to our objection. Exhibit 1, page
13 3. This was what started the hostile and -- this
14 is the false, defamatory and unjust conduct by way
15 of the Board. There was a Superintendent's message
16 to staff, a Superintendent's message on January 6,
17 that said, staff involvement in January 6 protest.
18 And this was on January 7. And it stated in no
19 uncertain terms from Superintendent Parker that
20 Allentown School District was made aware of a staff
21 member who was involved in the electoral college
22 protest that took place at the United States Capitol
23 building on January 6, 2021.

24 The problem there is that as the
25 School District knew the very next day, and as the

1 School District knew, he was nowhere near the
2 Capitol building, was not involved in the violent
3 riots, and was over a mile away. He attended a
4 rally. He was peaceful. He did things that were
5 lawful and just.

6 The fact that with haste the school
7 condemned him and said that he was involved in
8 violent protests completely poisoned the whole
9 school and community against Mr. Moorehead.

10 To make matters worse --

11 MR. TAYLOR: Mr. Malofiy, excuse me
12 for interrupting. I do want to remind you that the
13 purpose of this hearing is in regard to his failure
14 to return to work. We're not going to discuss that
15 investigation. It's just a matter, did he return to
16 work or not.

17 MR. MALOFIY: It's not. The reason
18 he's not in school right now is because of the
19 continuing course of action against Mr. Moorehead
20 and the failure of the District in providing a safe
21 environment for Mr. Moorehead. He had death
22 threats. There was a poisoned environment created
23 by the District, created by the Board, chastising
24 him, lambasting him as a racist, as a bigot, as a
25 despicable person, and even when -- even when the

1 solicitor cautioned members of the Board, and also
2 cautioned the District when that was what they were
3 saying because counsel, because the District,
4 because the school knew it was wrong, nothing was
5 done for the main and simple reason -- nothing was
6 done to simply correct the record and be
7 accountable.

8 There's two things that are
9 intolerable in an education system. One is
10 hostility towards anyone, whether that be a teacher,
11 whether that be a student. The other, the other is
12 failing to be accountable for that which you do. At
13 no step in time has this School District, has any
14 member, has counsel corrected the false and
15 defamatory statements against Mr. Moorehead. It's
16 necessary to look at what has happened to show that
17 there's a continuing course of conduct in treating
18 Mr. Moorehead unlawfully, unjustly, poisoning the
19 School District, the Board, and the community
20 against him.

21 These are things -- the reason we're
22 sitting here now is because to this day the School
23 District has failed to correct the record, failed to
24 be held accountable, failed to do what was right and
25 stop hostility within the School District which has

1 metastasized all throughout the community. And as a
2 person in a position of power, you would want the
3 School District, a school environment to be free of
4 hostility, and also that people are held
5 accountable. I think these are the two things we
6 strive for in an educational system, and also to
7 follow the Constitution. None of these things were
8 done.

9 I'm going to step through my record
10 because I think it is important, because this hasn't
11 been done, and it needs to be done in order to have
12 a factual basis of our objection.

13 On January 8, because there is no
14 correct, newspaper articles went out further
15 condemning Mr. Moorehead and tying him to the events
16 which allegedly resulted in violence and death. He
17 was no part of that event.

18 On -- excuse me -- on -- and even
19 worse, even worse, they called his conduct that he
20 was unAmerican and subversive. Those two things are
21 diametrically opposed to what Mr. Moorehead had
22 done. He was peaceful, he was nonviolent, he was at
23 a political rally, and did nothing wrong. The
24 correct course of action at that moment in time a
25 day later was to correct the statement, but the

1 District failed to do so. Counsel failed to do so.
2 Members of the Board failed to do so. That in and
3 of itself is a problem.

4 Let's be clear what happened. Mr.
5 Moorehead was fully transparent and fully explained
6 on January 8 what had occurred, because the District
7 called him in to a meeting. The problem is that the
8 meeting -- he was never told that there was FBI
9 involvement. He was never told that the FBI was in
10 contact with counsel. He was never told the FBI had
11 contacted the District. He was never told to seek
12 private criminal counsel because things that were
13 said which were untrue were leading to -- to law
14 enforcement becoming involved. In fact, to show how
15 poisonous this whole process has been, we found out
16 about the FBI involvement months later. And to this
17 day we asked for who from the FBI was in contact
18 with King Spry, who was in contact with the
19 District, who was in contact with the School Board.
20 And what did we hear, crickets.

21 So on one hand you want to have a fair
22 Loudermill hearing while you're deceptively hiding
23 the ball and deceptively misleading this man as to
24 what the hearing was about from the start, who was
25 involved, and how his rights may have been

1 prejudiced, not even disclosing to him that the
2 Loudermill hearing -- that the meeting, excuse me,
3 the meeting on January 8 that he was hauled into,
4 where he was providing statements, that the FBI
5 would be involved.

6 Now, when you have attorneys, licensed
7 attorneys from a big firm, we have a School Board,
8 and when you have members of that School Board, and
9 also Mr. Pidgeon and others who are supposed to
10 follow the Constitution, who are supposed to
11 understand what the Fifth Amendment right is, who
12 are supposed to understand what the First Amendment
13 right is, who are supposed to understand what the
14 Fourteenth Amendment right is, and when all those
15 violations, when all those -- when all of those
16 rights provided to Mr. Moorehead were violated, and
17 then hidden and concealed from him, it was a process
18 from the start which was illegal, unlawful,
19 poisonous, deceptive, false, fake and predicated on
20 unlawful and illegal and defamatory false statements
21 made against Mr. Moorehead.

22 So what happened? To this day has
23 anyone identified the FBI agent involved? Has
24 anyone told us who came to the school or did the
25 school come to them? No. The ball has been hidden

1 in all steps and time, and to this day there's been
2 no clearing of that issue. Counsel is has not
3 cleared that with Mr. Moorehead's counsel. No one
4 in the school has. Instead they let this false
5 narrative, they allowed it to be manufactured, they
6 allowed it to metastasize all over the District and
7 the community, and poison him to the point where he
8 has death threats to him and his family, where
9 members of the community and community groups have
10 labeled him in the worst possible terms, a racist, a
11 bigot, a hate monger, none of which he is.

12 When a hostile working environment is
13 created to such a degree by and through a School
14 District, members of the board, it's their
15 affirmative responsibility and duty to correct that
16 misstatement, to be held accountable for their
17 actions, as we teach all our children, and to not
18 create and foster a hostile environment. And that's
19 exactly what has happened to this very day.

20 When the School District knew police
21 were involved, when the school exhibit knew that he
22 had to have -- that police reports were made because
23 of the safety of his children and death threats
24 being made to him, when he had to change his
25 lifestyle, when he had to be fearful for his kids as

1 he is today, when all we asked for was a correction
2 of the record, and when that was not provided, has
3 not been provided to this day, seven months later is
4 too late after you destroyed someone's life,
5 destroyed their representation to go to then do
6 anything. His life is forever tarnished. He cannot
7 get a job in education. He cannot get a job
8 teaching children. He cannot do the things he
9 wanted to do do.

10 Let me finish on my timeline.

11 Let me continue.

12 Excuse me.

13 On January 21, there was a letter from
14 my firm. That letter was sent to Mr. Parker as well
15 as members of the Allentown School District --
16 excuse me, the Board, including Mr. Pidgeon. That
17 letter was very clear that I represent Mr.
18 Moorehead, and that there was First Amendment
19 retaliation and abuses against Mr. Moorehead which
20 were unconstitutional. And it laid it out very
21 clearly in my letter to Mr. Freund. Yet instead of
22 anything being done to correct the record, nothing
23 was done whatsoever. Instead of anything being done
24 to stop the hostilities, nothing was done to be held
25 accountable.

1 On Exhibit -- January 26. One second,
2 let me pull up the number. January 26 -- hold on
3 one second. January 26, again a letter was written
4 to counsel for the District, Mr. Freund. Moorehead
5 versus Allentown School District, et al. Failure to
6 correct defamatory statements and constitutional
7 violations. I have made out very clearly what the
8 issue was, even asking for the simple -- simple
9 request of an, I'm sorry. You know, I'm sorry goes
10 a long way. That wasn't provided here at all. Not
11 an I'm sorry, not let's correct the record, not you
12 know what, we messed up.

13 MR. TAYLOR: Mr. Malofiy, I understand
14 the basis of your objection. But now we're at the
15 point where you're reading in evidence, and your
16 objection is understood.

17 MR. MALOFIY: I'm putting my exhibits
18 in for the objection.

19 MR. TAYLOR: No, this is the school's
20 hearing.

21 MR. MALOFIY: That's right, but I have
22 a legal objection which is grounded in facts, and I
23 have exhibits which I will put on the record. You
24 can put whatever you want at the end, because we
25 never had this opportunity, and we are entitled to

1 this opportunity to put our objection in.

2 MR. TAYLOR: No one is foreclosing
3 your opportunity.

4 MR. MALOFIY: The objection comes at
5 the beginning of the hearing by law.

6 MR. TAYLOR: Yeah, you've had an
7 opportunity to pose your objection. And it's noted.

8 MR. MALOFIY: I'm not going to cut you
9 off. You can have whatever time you want to put
10 whatever you want on the record. Right? And what
11 it should be is, I'm sorry, Mr. Moorehead, we should
12 have corrected the record, and we're sorry for
13 creating a hostile work environment and destroying
14 and ruining your career. That would be appropriate.
15 But I'm not going to tell you what to say or how
16 long you need to say it.

17 January 28 -- excuse me, January 28,
18 again, we asked Allentown School District, they must
19 correct the false and defamatory statements
20 immediately and the reason why. That's also an
21 exhibit.

22 Excuse me.

23 On April 1, we also sent a letter,
24 continued failure to correct defamatory statements,
25 personal liability, we also identified again the

1 issues that we had as clearly outlined in our
2 April 1, 2021 letter.

3 On April 9 there was a notice of a
4 Loudermill hearing, which we -- clearly it was a
5 fake Loudermill notice, because it shifted the goal
6 posts as to what allegedly Mr. Moorehead had done
7 wrong.

8 Excuse me.

9 On April 13 we wrote the District. We
10 let them know legally why we're supported by the
11 law, legally cases that support our position, and
12 legally why that Article 10 of the Collective
13 Bargaining Agreement says there must be just cause.
14 No employee shall be reprimanded in writing or
15 discipline without just cause. There is no just
16 cause here to do anything against Mr. Moorehead.
17 That was provided to the District. In addition,
18 there was no notice before he was reprimanded.

19 On May 4, 2021, I wrote an email
20 objecting to the Loudermill hearing, the prior
21 Loudermill hearing. The reason for that was very
22 clear, and I'll read you the fourth paragraph which
23 sums it up. The District has nothing to address,
24 correct, rectify, or mitigate any of these extremely
25 serious violations of his constitutional and

1 contractual rights. We therefore object to any
2 attempt to hold a sham Loudermill hearing, and we
3 object to your characterization of what you have
4 scheduled as a Loudermill hearing, diametrically
5 opposed to what was on -- to what allegedly occurred
6 and why he was initially suspended on January 6 --
7 7th, excuse me.

8 On May 24 we said it's five months
9 since you illegally suspended him and how he has
10 been held in limbo, and that is absurd. That is the
11 email of May 24, 2021, which established the
12 timeline.

13 On July 16 we received a letter from
14 Allentown School District clearing Mr. Moorehead,
15 and stating in no uncertain terms after fully
16 investigating your involvement in the events of
17 January 6, 2021 in Washington DC the District has
18 concluded that your presence at the January 6
19 gathering did not violate School Board Policy 419
20 relating to teacher non-school activities.

21 And that's the point, because that
22 point was known the very next day when he was hauled
23 into a meeting and disclosed to the school, to the
24 members, to Mr. Pidgeon and other members of the
25 District. And then it goes on to basically wanting

1 him to come back to the District, not in the school,
2 the position he was in, but then basically admit
3 that he's a racist, and that he needs classes to
4 teach him what's constitutional and how he can
5 teach, and what he's done wrong.

6 No. Mr. Moorehead did nothing wrong.
7 Mr. Moorehead did not violate any policy. And we
8 made it clear that until the School District fixes
9 the record and corrects the misstatement, that
10 that's a first step. But the problem here is that
11 nothing has been done in months. And then the
12 District wants to tell Mr. Moorehead that, oh, he
13 needs classes because he's a racist. And that's
14 absolutely unfair, unjust, and unsubstantiated by
15 the record, creating a hostile work environment.

16 Let's be clear, and we discussed on
17 the July 30 letter the response to the letter
18 reinstating Jason Moorehead. Forgetting the issues
19 with the Loudermill hearing, there's a false and
20 defamatory statement made by the District against
21 Mr. Moorehead. No matter what happens in the
22 Loudermill hearing that has not been addressed or
23 corrected, and that stands.

24 But let's be clear. There was a
25 hostile work environment created that was never

1 corrected. And because this stigma is now permanent
2 he cannot go back. And the School District, even
3 when we begged and pled to address this, to correct
4 this, to make things right, they stuck their nose in
5 the air and didn't want to admit or be held
6 accountable for the wrong conduct. And that's our
7 July 30, 2021 letter.

8 On July -- excuse me, August 16, Mr.
9 Moorehead wrote a very touching letter to Mr.
10 Pidgeon where he made it clear that accountability
11 matters. The School District and Board need to
12 publicly post an apologize on the website and social
13 media unequivocally correcting the record and
14 clearing my name, and send the apology to the
15 newspapers and news stations in Allentown. They
16 also need to send an email to all students, parents,
17 teachers, administrators and staff doing the same.
18 There also needs to be mentoring and training for
19 the staff members on free speech due process so it
20 never happens again. Yet seven months later nothing
21 was done. Nothing was done. And the harm now has
22 been permanent. It can't be undone.

23 Additionally, you know, he stated in
24 his letter every relationship is built upon trust,
25 and the School District and the Board destroyed his

1 trust with the students, destroyed the trust that he
2 had with parents, and the community, and made it
3 impossible for him to trust the District as well.

4 When you're hiding the fact that
5 there's -- that there's law enforcement involvement
6 with an interrogation, to this day when you sit here
7 and have a record being created, but never address
8 that there was law enforcement, and his rights could
9 have been severely hurt, the only thing is that Mr.
10 Moorehead did nothing wrong. But still that has not
11 been clear as we sit here today. How can Mr.
12 Moorehead trust the District when the District
13 refused to be held accountable for false and
14 defamatory statements? It can't. Trust goes both
15 ways. There has to be trust that Mr. Moorehead --
16 that the students have in Mr. Moorehead. There has
17 to be trust the parents have in Mr. Moorehead.
18 There has to be trust that the community has in Mr.
19 Moorehead. You cannot be a teacher unless you have
20 those bonds of trust, which every relationship is
21 built upon.

22 When the School Board, when the Union,
23 when the -- when the District themselves has
24 abandoned this man, has castrated every ability he
25 had to teach, has tarnished him, called him a racist

1 and a bigot, and not corrected that and allowed the
2 community to do the same, even having School Board
3 meetings lambasting him, destroying his reputation,
4 and never taking the simple step to correct the
5 record, you've destroyed his career.

6 Any reasonable person, any community
7 member, any member of the Black community, the
8 Latino community, any community looks to the School
9 Board, looks to the leader of the Union, looks to
10 the Superintendent for guidance. And when nothing
11 is being said to correct that false and defamatory
12 record, that false and defamatory manufactured
13 stigma that was created against Mr. Moorehead, we
14 tend to trust our leaders, we tend to trust our
15 Superintendent, we tend to trust our School Board,
16 and when no one in the community gets a correction
17 from those leaders in power it makes that stigma
18 permanent.

19 And that's the real harm here. The
20 real harm is that there can't be a whitewashing
21 here. The real harm is that you can't make this
22 right. You can't fix the false defamatory
23 statements. You can't go to every community member
24 who blasted him at School Board meetings and say,
25 you know what, we rushed to judgement, but we want

1 to correct this now. It has been fully destroyed.
2 And that's the harm here. Because how can he return
3 when you haven't even addressed two things,
4 correcting the record, and creating a safe
5 environment.

6 It's too long. It's gone too far.
7 And it can't be done now. And that's the -- that's
8 the -- that's the real harm that we have. You had
9 someone who left their home, left Seattle to come to
10 Allentown, when every other Superintendent baled,
11 when every other Superintendent wanted to go
12 somewhere else, he wanted to go to an environment
13 that was challenging so he can help children. And
14 when you have someone so committed to leaving their
15 home and establishing a new home, a new home in
16 Allentown School District, and when you destroy that
17 home for them, it's a real sad state to think that
18 the leaders in a position of power didn't do the
19 right thing to correct a record, to be held
20 accountable, and deny the hurt to this man and his
21 family.

22 Finally, after he wrote his letter,
23 which was very clear, on August 16, an interesting
24 thing happened. Again, without notice and without a
25 hearing Mr. Moorehead's relationship with the school

1 changed without a hearing and without notice. And
2 he was stopped being paid. So let's focus on this
3 aspect of this hearing, all right, now that we have
4 established our objection to the whole process.

5 Before he was on suspended paid leave.
6 Then the School District and the Board stopped
7 payments to him, which changed the position he was
8 in without a notice, no notice, without a hearing,
9 which in and itself is a lawsuit. Once it was
10 determined that the School District had changed his
11 status again without notice and without a hearing,
12 Mr. Moorehead filed lawsuits against the School
13 District, against Mr. Pidgeon, against the Board
14 members for the unlawful, illegal conduct. And in
15 fact, we filed suit on 9/9. We made sure that Mr.
16 Freund and Mr. Pidgeon received notice of the
17 lawsuit for constitutional violations. On 9/9 Mr.
18 Pinch said that he had in fact received the notice
19 of the lawsuit.

20 I made it clear on September 9, 2021,
21 any actions taken against Mr. Moorehead by the
22 District will only be viewed as retaliatory and
23 punitive. And I asked for the District, Mr. Freund,
24 and Mr. Pidgeon, to act accordingly. And what do
25 they do after the lawsuit was filed? They then on

1 September 13 filed notice of a Loudermill hearing,
2 which is nothing more than a pretextual response to
3 a lawsuit being filed for constitutional violations,
4 and nothing more than a pretextual reason for
5 hauling him in.

6 Mr. Moorehead, as you know, as has
7 been stated in all the exhibits which I've shown to
8 you, cannot return to a hostile working environment
9 with an enraged community, with an enraged student
10 body, because they're led to believe he's someone
11 who he is not.

12 Nothing was said about correcting the
13 record. Nothing was said about being held
14 accountable. Nothing was said about, I'm sorry.
15 Nothing was said about putting him in a safe
16 environment or making sure these hostilities
17 wouldn't occur. To ask him to come back to the
18 school is inviting harm upon him and his family, and
19 further constitutional violations.

20 We made it clear he cannot return to
21 school because the school failed to say, I'm sorry,
22 failed to correct the record for seven months, and
23 created a hostile work environment, manufactured by
24 the District, and allowed to proliferate by the
25 District, without any correction.

1 And so it's our position that we
2 object to this process in its totality from
3 beginning to end. It violates the First Amendment,
4 it violates -- it violates the Fourteenth Amendment.
5 We also object, and we're not going to legitimize
6 this process by participating in it, other than
7 stating our objection. And we see this only as an
8 attempt to manufacture a pretextual record of
9 changing goal posts, when we asked for a very simple
10 thing from the start, from day one. Day one we
11 asked for the same thing, factually legally correct,
12 but it's never been done.

13 And there's nothing more to really say
14 other than it's sad when you have someone who was a
15 17 year old -- a 17 year school teacher, who had an
16 impeccable record, who was involved in after school
17 sports, so there is no issues with anything that he
18 had ever done, but because of a false and defamatory
19 statement made by Superintendent Parker and by the
20 District, and by continuing conduct by the District,
21 and by the Board, calling him unAmerican and his
22 actions subversive. The failure to correct that
23 record, the failure to follow the law, he's now in a
24 position where his life has been ruined.

25 And, you know, you can't engage in

1 viewpoint politics. The First Amendment protects
2 speech, protects the right to freedom of speech,
3 freedom to petition and disagree with your
4 government. And what we have here is someone who
5 was cancelled out, because certain members didn't
6 like his viewpoint. And that is unconstitutional,
7 which was made clear when they allowed him back
8 through the letter on July 16, that he had done
9 nothing wrong by attending a rally.

10 That's our objection, and we
11 incorporate all our exhibits in with that objection.

12 MR. TAYLOR: I'd like to begin with a
13 procedural statement about the hearing. The purpose
14 of a Loudremill hearing is to conduct an initial
15 check on the evidence that may be used to recommend
16 further discipline to the Board of Directors. Today
17 Mr. Moorehead has been provided, and will be
18 provided with an opportunity and the right to see
19 the evidence and provide comment and response for
20 consideration by the Board, if he chooses.

21 His lawyer has already been allowed
22 to place his full objection on the record, and has
23 been allowed to submit evidence as part of that
24 objection.

25 MR. MALOFIY: And I thank you for

1 that. I thank you for -- it was a lengthy
2 objection, but it was necessary, and I appreciate
3 the patience and courtesy that counsel provided.
4 And I thank you for that opportunity to have this
5 put on the record to address and resolve some
6 issues. Thank you.

7 MR. TAYLOR: In the event the evidence
8 as reviewed and discussed today is referred to the
9 Board for further discipline, Mr. Moorehead will be
10 provided a full formal hearing consistent with his
11 due process rights that he's already been provided
12 today. He'll be afforded the right to see the
13 evidence, have counsel present, and cross-examine
14 witnesses.

15 Mr. Moorehead do you intend to return
16 to work?

17 MR. MALOFIY: We have already -- we
18 have already made that clear in the objection and in
19 his letter of August 16. One second though.

20 Are you there?

21 MR. TAYLOR: Are you speaking to your
22 client?

23 MR. MALOFIY: We've already made it
24 clear he cannot return to work because of the
25 hostile work environment.

1 MR. TAYLOR: Okay. Just so it's
2 crystal clear to everyone, he does not intend on
3 returning to work.

4 MR. MALOFIY: No. And the District
5 already fired him by refusing to pay him. That's
6 what happened. You failed to pay him.

7 MR. TAYLOR: That's legal argument.
8 I'd like to proceed with the presentation of
9 evidence.

10 MR. MALOFIY: No, but just to be
11 clear, you're asking a legal question.

12 MR. TAYLOR: No, I asked if he
13 intended to return to work.

14 MR. MALOFIY: No, no. You want to get
15 a catch word when you've already fired him by
16 failing to pay him, and when you already failed to
17 provide him notice for a hearing that his pay would
18 be removed, you have effectively fired him. This
19 hearing then becomes pretextual when --

20 MR. TAYLOR: Your objection has been
21 noted.

22 MR. MALOFIY: Hold on. The hearing
23 becomes pre pretextual when you've already
24 suspended him and changed him from paid leave to
25 unpaid leave, which means that actions were taken

1 against him to fire him.

2 MR. TAYLOR: We are going to proceed
3 with the evidence.

4 MR. MALOFIY: That's fine, because
5 it's predetermined. Because it's predetermined this
6 is a sham Loudermill process.

7 MR. TAYLOR: Exhibit A, which I
8 believe you have, you were forwarded all our
9 exhibits this morning. Exhibit A is a Loudermill
10 notice dated September 13th, 2021. It was sent to
11 Mr. Moorehead by email, first class mail, and
12 certified mail.

13 Mr. Pidgeon did you send out this
14 notice?

15 MR. PIDGEON: Yes, I did.

16 MR. TAYLOR: This notice provides a
17 date and time and location of the original hearing.
18 The notice states that the purpose for the hearing
19 is to afford Mr. Moorehead the opportunity to meet
20 with the Administration and provide information to
21 be considered by the Administration before any
22 recommendation is made to the Board. This notice
23 explains the conduct at issue. The conduct listed
24 in this notice is number 1, a failure to attend
25 required in-service days from the beginning of the

1 work year, the school year. Number 2, failure to
2 report for the 2021-2022 school year opening.
3 Lastly, this letter notes and includes a
4 chronological history of communications between you
5 and your lawyer and the Administration.

6 MR. MALOFIY: We object to that. It
7 provides communications by and through -- between
8 counsel, and I mean, we have our own exhibits that
9 we provided which I think are more --

10 MR. TAYLOR: I imagine these exhibits
11 match. Exhibit B.

12 MR. MALOFIY: They actually don't. I
13 don't suggest that you altered documents, I'm
14 suggesting it's not a complete record. The complete
15 record is that which we've provided in our exhibits.
16 And just to say, this has already addressed, the
17 points in this letter have been addressed.

18 MR. TAYLOR: Exhibit B is an email
19 from Attorney Freund dated September 17, 2021
20 rescheduling the hearing to today.

21 Mr. Pidgeon, were you provided a copy
22 of this email from the District's file.

23 MR. PIDGEON: Yes.

24 MR. MALOFIY: Just to be clear, just
25 to show that how -- how unfair the process has been,

1 these were both scheduled unilaterally. Every
2 Loudermill hiring was basically scheduled
3 unilaterally. I have a very busy schedule, and I
4 asked to work together to come with a new date, and
5 as I said, it was unilaterally scheduled. I made it
6 work, but the point is that when every step taken is
7 subversive, and against transparency, and done
8 unilaterally, it shows that the hearing is just
9 pretextual and the result is preordained.

10 MR. TAYLOR: Exhibit C is an email
11 from Attorney Freund dated September 15, 2021, where
12 he, number 1, intends to confirm the original
13 Loudermill date. He also makes an inquiry to a
14 resignation in lieu of hearing. And he reiterates
15 his understanding that based upon past
16 correspondence that Mr. Moorehead does not intend on
17 returning.

18 Mr. Pidgeon, were you provided a copy
19 of that email from the District's file?

20 MR. PIDGEON: Yes, I was.

21 MR. MALOFIY: And to be clear again,
22 again, this is where you unilaterally scheduled a
23 Loudermill hearing without any -- without any any
24 attempt to work out an acceptable date. We are
25 here, but it shows the process has not been fair.

1 MR. TAYLOR: I also want to note for
2 the record the Administration has been very, very
3 cooperative in rescheduling dates as requested.

4 MR. MALOFIY: Did you ever ask me
5 what date works before you scheduled unilaterally?
6 No.

7 MR. TAYLOR: But they were rescheduled
8 and you're here for that.

9 MR. MALOFIY: No, no, let's not create
10 a false record here.

11 MR. TAYLOR: There is no false record
12 here. Moving on --

13 MR. MALOFIY: No.

14 MR. TAYLOR: I've heard your
15 objection. I heard your objection. You've had the
16 opportunity to respond.

17 MR. MALOFIY: I'm going to make it
18 clear, no one reached out to me asking for an
19 acceptable date that was reasonable. They just set
20 a date and expected me to appear on a day's notice.

21 MR. TAYLOR: And your statement is on
22 the record.

23 MR. MALOFIY: Right.

24 MR. TAYLOR: Okay. Moving on.

25 Exhibit D is correspondence dated August 16, 2021

1 from Attorney Malofiy that begins, there is no way I
2 can return to the Allentown School District.

3 Mr. Pidgeon, do you recall receiving
4 this correspondence?

5 MR. PIDGEON: Yes, from Mr. Moorehead.

6 MR. MALOFIY: Just to be clear, it
7 says, you're right, there is no way I can return to
8 the Allentown School District given the way the
9 District has publicly vilified and defamed me,
10 poisoned the community against me, put me and my
11 family's safety in jeopardy, and never corrected the
12 record. So let's just read the full first sentence
13 which kind of lays it out there, all factually true.

14 MR. TAYLOR: Exhibit E is
15 correspondence dated August 9, 2021 to Mr.
16 Moorehead. It's a follow-up letter requesting a
17 reply to an earlier return to work letter sent by
18 the District.

19 Mr. Pidgeon, do you recall sending out
20 this letter?

21 MR. PIDGEON: Yes, I do.

22 MR. MALOFIY: Just to be clear,
23 everybody knows I'm counsel for Jason Moorehead as
24 far as back as seven months ago. Mr. Pidgeon does.
25 King Spry does. Mr. Freund does. How I'm

1 eliminated from any communication, even courtesy
2 copied on, is bizarre, because I've dealt with many
3 counsel, many districts, and, you know, it's not
4 just a simple first request, it's a multiple request
5 saying, hey, I shouldn't be the last one to know.
6 When there's legal document being sent to my client
7 I should be the first one to know. Correspondence
8 should be handled and directed to me. And if that's
9 not going to happen, at the very least a courtesy
10 copy should be provided. And Mr. Pidgeon failed to
11 do than on virtually I think all of his
12 communications with my client. I would also -- I
13 also made that an issue with Mr. Freund, and with
14 the District multiple times, and nothing was done to
15 correct that, clearly showing also how this was
16 treated unilaterally, unjustly, and unfairly from
17 the start by excluding his counsel from legal
18 communications. To be clear -- that's all I have to
19 say. Regardless of when it says it was mailed, it
20 does not -- it does not indicate when it was
21 received.

22 MR. TAYLOR: Mr. Pidgeon, is there any
23 evidence that that was not received?

24 MR. PIDGEON: No.

25 MR. TAYLOR: Exhibit F.

1 MR. MALOFIY: It was never received by
2 counsel. It should have been copied to counsel, and
3 it should have been received by counsel. I received
4 everything sometimes weeks later. Sometimes right
5 before an important deadline or date. Yeah, there's
6 a serious issue when counsel of record is not
7 provided copies, or courtesy copies, or copied into
8 the communications when it should be counsel that
9 receives the communication directly, because all
10 communications, as you know, once counsel is
11 involved comes through counsel.

12 MR. TAYLOR: Exhibit F is
13 correspondence dated July 30, 2021 from Attorney
14 Malofiy to Attorney Freund. It begins with the
15 sentence, as we discussed on the phone, Mr.
16 Moorehead is rejecting the District's proposal.

17 Mr. Pidgeon, were you forwarded a copy
18 of this letter from Attorney Freund?

19 MR. PIDGEON: Yes.

20 MR. TAYLOR: Exhibit G is a letter --

21 MR. MALOFIY: Just to be clear, your
22 record -- the record which you've established also
23 suggests that the prior letter of August 9 is
24 inaccurate, because you do have communications from
25 us on July 30. So to say that you had not heard

1 back from us regarding the July 16 letter is just --
2 is inaccurate, because of the July 30 letter. In
3 other words, you have a letter of August 9 saying
4 you did not hear back from the July 16 letter, but
5 you had a July 30 letter. So your timeline is
6 wildly inaccurate, and verified by the actual record
7 as you yourself are laying down.

8 MR. TAYLOR: Exhibit G is a letter
9 from the District dated July 16, 2021, with a
10 reference, return to teaching assignment, returning
11 Mr. Moorehead to work for the 2021-2022 school year.

12 Mr. Pidgeon, did you send that letter?

13 MR. PIDGEON: Yes, I did.

14 MR. TAYLOR: How was that letter sent?

15 MR. PIDGEON: Electronic, first class,
16 and I don't believe we sent this one certified. I
17 believe it was just electronic and first class.

18 MR. TAYLOR: Are all these letters
19 that we reviewed, are they part of Mr. Moorehead's
20 employment file?

21 MR. PIDGEON: Yes.

22 MR. TAYLOR: I think I asked you about
23 one specific letter, but is there any indication
24 that he did not receive any of the letters that were
25 sent to him.

1 MR. PIDGEON: No indication from my
2 point of view.

3 MR. MALOFIY: Whoa, whoa, whoa. Let
4 me just straighten out the record for a moment. You
5 would agree you never sent any communications to me,
6 correct, other than receiving the lawsuit,
7 confirming you received the lawsuit, Mr. Pidgeon,
8 correct?

9 MR. TAYLOR: You can answer.

10 MR. PIDGEON: No.

11 MR. MALOFIY: Were you aware that Mr.
12 Morhead had to leave his residence during periods of
13 time because of the threats against him?

14 MR. PIDGEON: What does that have to
15 do with him returning to work?

16 MR. MALOFIY: You're sending letters
17 to him to his mailing address.

18 MR. PIDGEON: Also electronically.

19 MR. MALOFIY: You sent them
20 electronically as well. And you never sent it to me
21 as counsel, correct?

22 MR. PIDGEON: Not that I'm aware of,
23 no.

24 MR. MALOFIY: All right. Were you
25 aware that counsel had requested -- were you aware

1 that counsel has requested, counsel requested that
2 all communications to be directed to counsel.

3 Are you aware that counsel --

4 MR. TAYLOR: He answered your
5 question.

6 MR. MALOFIY: You're saying was this
7 served and was this sent appropriately. It wasn't,
8 and you know that.

9 MR. TAYLOR: I'm asking him if it was
10 sent. Maybe you weren't happy with the way it was
11 sent.

12 MR. MALOFIY: No, I think the
13 question, the way it's asked, it implies that
14 something was done correct when it was not.

15 MR. TAYLOR: It was done, and he
16 received it, and he had notice.

17 MR. MALOFIY: No.

18 MR. TAYLOR: Are you saying -- you're
19 saying he didn't know?

20 MR. MALOFIY: No, I'm going to say
21 this, and I'll make it very clear. When counsel
22 enters on a case, when he makes it clear to the firm
23 and to everyone involved that all communications
24 should be addressed to me as his counsel, that means
25 that he does not receive notice, that means that he

1 does not receive mail, I do. And when you failed to
2 notice the person in charge of his legal
3 representation you acted subversively, you acted
4 deceptively, and you hid the ball.

5 You're counsel, you know that. Mr.
6 Pidgeon knows that. Mr. Freund knows that. I asked
7 repeatedly why wasn't I getting notice, why am I the
8 last one to know when his legal rights are being
9 abridged. When you say you provided notice, no,
10 because it was never received by me.

11 MR. TAYLOR: Now you're making a legal
12 argument.

13 MR. MALOFIY: No, I'm not. I'm
14 making --

15 MR. TAYLOR: You're making a legal
16 argument. We are in the middle of the presentation
17 of our evidence. You're free to respond. He's free
18 to respond. He'll have his opportunity at the end.

19 MR. MALOFIY: Well, I'm -- go ahead.

20 MR. TAYLOR: Mr. Pidgeon, has the
21 school year begun?

22 MR. PIDGEON: Yes.

23 MR. TAYLOR: When did it begin?

24 MR. PIDGEON: The teaching staff
25 reported back August 27.

1 MR. TAYLOR: Did Mr. Moorehead report
2 back to school.

3 MR. PIDGEON: He did not.

4 MR. TAYLOR: Has he reported for any
5 of the required pre-school year in-service sessions
6 or requirements.

7 MR. PIDGEON: No, he has not.

8 MR. TAYLOR: Has he tendered or made
9 any type of request for sick leave or any other type
10 of leave?

11 MR. PIDGEON: No, not to me or my
12 office.

13 MR. TAYLOR: And issue has come up
14 regarding his pay. Can you explain your
15 understanding of the pay?

16 MR. PIDGEON: In all honesty, this is
17 the first I've heard that his pay was cut off. And
18 if his pay was cut off, when I go back to my office
19 we'll reinstate it right away, because it should not
20 have been cut off. My only explanation to that is
21 because Mr. Moorehead did not have a specific
22 assignment, because we were going to work with him
23 to provide him with an assignment, that when we
24 export the information from our HRIS system into the
25 payroll system it did not get exported with the new

1 school year. But we will make that -- we will
2 correct that issue, because that is an issue.

3 MR. TAYLOR: Okay. Does the District
4 have a policy with regards to a teacher who fails to
5 report or return to the classroom and they haven't
6 requested leave?

7 MR. PIDGEON: I don't know that we
8 have a specific policy that would talk to that. I
9 would have to go back and look at the policy book.
10 But anybody who does not report back to work we
11 would contact to see why they're not reporting back
12 to work. We would -- you know, if they had a
13 legitimate medical reason or other reason we work
14 with them in that capacity. Somebody who refuses to
15 report back to work we would start the -- either ask
16 for a resignation or start the process to move
17 towards a recommendation for termination. And that
18 would be part of process that we're conducting right
19 now today.

20 MR. TAYLOR: This matter has not come
21 up before the Board for decision yet, correct?

22 MR. PIDGEON: No, it has not.

23 MR. TAYLOR: And the Administration
24 hasn't made a decision as to a recommendation yet?

25 MR. PIDGEON: No, we have not.

1 MR. TAYLOR: Does Mr. Moorehead have
2 anything that he would like to add to the record?

3 MR. MALOFIY: Only through counsel.

4 MR. TAYLOR: So at this time I'm going
5 to conclude the --

6 MR. MALOFIY: I have some questions.
7 You put a witness on.

8 MR. TAYLOR: Questions?

9 MR. MALOFIY: Yeah, I want to question
10 the witness. He put factual statements on the
11 record, I want to cross-examine him.

12 MR. TAYLOR: No, no.

13 MR. MALOFIY: Yes, yes. And you know
14 this. You can't -- you can't put someone on the
15 stand and have a one sided unilateral --

16 MR. TAYLOR: This isn't a trial.

17 MR. MALOFIY: It doesn't matter. I'm
18 entitled to ask him specific questions. That goes
19 against jurisprudence in the first degree.

20 MR. TAYLOR: Well, I will take it
21 question by question because this isn't a trial.

22 MR. MALOFIY: Why didn't you include
23 me as his counsel where all communications were
24 supposed to come to for notice, why wasn't I
25 included, sir?

1 MR. TAYLOR: No.

2 MR. PIDGEON: No? Okay.

3 MR. MALOFIY: You're going to tell him
4 to refuse to answer that question?

5 MR. TAYLOR: Yes. I believe he's
6 answered it.

7 MR. MALOFIY: No, he hasn't. I'm
8 asking --

9 MR. TAYLOR: Well, I disagree with
10 you. Do you have another question?

11 MR. MALOFIY: You can't disagree with
12 me. You can instruct him not to answer, but you
13 can't disagree with me.

14 MR. TAYLOR: He's been instructed not
15 to answer.

16 MR. MALOFIY: On what basis? This is
17 all about notice. This is all about notice, and
18 it's creating this clear timeline where counsel was
19 never provided with notice, was never provided that
20 which occurred, was never provided legally important
21 documents, when all communications were supposed to
22 be directed to my attention, and now you want to
23 manufacture a timeline.

24 MR. TAYLOR: No.

25 MR. MALOFIY: That's what you want to

1 do. And now you want to prevent him from answering
2 why he didn't provide the email to me, or a letter
3 to me in every substantive communication to my
4 client.

5 MR. TAYLOR: I just want to note that
6 it's on the letter, how each letter was sent, and
7 who it was addressed to.

8 MR. MALOFIY: I'm not asking you to
9 testify because I heard your questioning, and now
10 I'm entitled to cross-examine the witness.

11 Sir, you would agree with me that I
12 was not included as his counsel as a party to be --

13 MR. TAYLOR: The documents speak for
14 themselves.

15 MR. MALOFIY: He can answer the
16 question. If you want me to ask questions of you
17 I'd be happy to, but I don't want to offend Mr.
18 Freund or your firm.

19 MR. TAYLOR: I'm not a witness.

20 MR. MALOFIY: I know that.

21 Mr. Pidgeon, you did have my email
22 address, correct?

23 We can go back to January where I
24 send you communications. You had my e-mail address
25 sir, correct?

1 MR. TAYLOR: But actually the notice
2 issue is completely irrelevant.

3 MR. MALOFIY: It's either an
4 instruction not to answer, because you're afraid of
5 the District --

6 MR. TAYLOR: I'm not impugning your
7 motives, or your questions, don't impugn mine. I'm
8 instructing him not to answer. Do you have another
9 question?

10 MR. MALOFIY: On what basis?
11 You're establishing a timeline which
12 is predicated on notice, and you failed to notice
13 the attorney representing Mr. Moorehead.

14 MR. TAYLOR: Are you saying he was
15 unaware he had to return to work?

16 MR. MALOFIY: Sir, I'm asking
17 questions of the witness. I'm entitled to
18 cross-examine. And he's not going to return to
19 work. You created a hostile work environment, and
20 failed to do anything to protect his safety. Let me
21 continue.

22 MR. TAYLOR: No, no no.

23 MR. MALOFIY: No, no, no. Let me
24 continue.

25 MR. TAYLOR: I'm objecting, and I have

1 instructed him not to answer. Do you have another
2 question?

3 MR. MALOFIY: I'm going to put my
4 questions on the record and I want it to be clear
5 because the court reporter has to-- and allow the
6 court reporter to take down his testimony.

7 Sir, you would agree with me you never
8 provided me as his attorney to be noticed, the
9 letters and communications which you sent to Mr.
10 Moorehead regarding his employment, correct?

11 MR. TAYLOR: Don't answer.

12 I'm instructing him not to answer.

13 MR. MALOFIY: Isn't that correct, Mr.
14 Pidgeon?

15 MR. TAYLOR: Do you have another
16 question? Otherwise we're done here. I've
17 instructed him not to answer. Do you have another
18 question?

19 MR. MALOFIY: Okay. Did you instruct
20 him not to answer my last one? You have to say that
21 to the question, sir, otherwise the record is not
22 clear. After my question is asked you have to state
23 an instruction not to answer, and then --

24 MR. TAYLOR: I'm instructing him not
25 to answer. It's more than clear.

1 MR. MALOFIY: I understand that.

2 MR. TAYLOR: Okay. We're done.

3 MR. MALOFIY: No, no.

4 MR. TAYLOR: Oh, yes.

5 MR. MALOFIY: We have to be fair here
6 and transparent.

7 MR. TAYLOR: How? We've been very
8 fair and transparent. You've asked a question, and
9 I instructed him not to answer. I'm asking you for
10 your next question so we can just move on. So
11 you're the one obstructing, you're stopping the
12 proceeding.

13 MR. MALOFIY: I don't know why you're
14 yelling at me. You have to say instruction not to
15 answer after the question. That's all I'm asking
16 you to be clear. It has be a clear record.

17 MR. TAYLOR: It is a clear record. Do
18 you have another questions? He's been instructed
19 not to answer.

20 MR. MALOFIY: There's no reason for us
21 to bicker back and forth. We're above that.

22 MR. TAYLOR: I agree. Move on to your
23 next question.

24 MR. MALOFIY: I'm going ask my
25 question clearly, and then you're going to put your

1 objection on, or instruction, and then we'll go to
2 the next one.

3 MR. TAYLOR: I've already done it.

4 MR. MALOFIY: No, it doesn't work like
5 that.

6 MR. TAYLOR: It does work like that.

7 MR. MALOFIY: Okay. I'm going to ask
8 again. You can say he can't answer and we'll go to
9 the next one. And I don't want to argue with you.
10 Okay? We're above that.

11 MR. TAYLOR: Let's take a recess.

12 MR. MALOFIY: He's in the middle of a
13 question. You can't do that. You can't stop in the
14 middle of cross-examination.

15 MR. TAYLOR: I've instructed him five
16 times not to answer.

17 MR. MALOFIY: Okay.

18 MR. TAYLOR: Your question is on the
19 record. He's been given an instruction.

20 MR. MALOFIY: Let me move forward so
21 it's clear. You don't want him to answer that one,
22 fine. The next one, allow me to ask it. And then
23 you make your objection or your instruction clear.

24 At what point in time did you provide
25 counsel for Mr. Moorehead notice --

1 MR. TAYLOR: Before you finish your
2 question, let's take a recess, take a break.

3 MR. MALOFIY: You can't do that in the
4 middle of cross-examination. You can't do that.
5 It's a cardinal rule.

6 MR. TAYLOR: This isn't a trial. He
7 can stay in the room.

8 MR. MALOFIY: Yes, it is.

9 MR. TAYLOR: No, it's not a trial.
10 That's what you don't understand. As I said, he's
11 going to stay in the room. I'm going to excuse
12 myself.

13 MR. MALOFIY: Mr. Taylor wants to
14 coach his witness now.

15 MR. TAYLOR: I resent that.

16 MR. MALOFIY: What's the basis then?

17 MR. TAYLOR: I want to take a recess.
18 That's the basis. If you have a problem you can put
19 that on the record. That's fine.

20 MR. MALOFIY: All right. So you want
21 to stop the questioning. You want to leave the room
22 while he stays on the stand, and you're not going to
23 coach the witness, correct?

24 MR. TAYLOR: He's not on the stand.
25 He hasn't been sworn.

1 MR. MALOFIY: Has anything he's saying
2 factually true? Are you relying on his testimony?

3 MR. TAYLOR: Well, your guy testified
4 of everything he had to say.

5 MR. MALOFIY: Because I made it very
6 clear his position. He's testifying to facts here.

7 MR. TAYLOR: We're taking a recess.

8 MR. MALOFIY: No, you can't go off.
9 You can't go off. You obviously can't do that, you
10 know that.

11 MR. TAYLOR: What are you talking
12 about? I am leaving, I am going to the bathroom.
13 If you want to follow me to the bathroom that's
14 fine.

15 MR. MALOFIY: No, he cannot do that.

16 MR. TAYLOR: No, I said I am.

17 MR. MALOFIY: Okay. He can't do that.
18 He has to stay on because he's being questioned now.
19 Otherwise it's a Cardinal objection.

20 (Mr. Taylor left the room, and the
21 hearing was recessed.)

22 * * *

23 MR. MALOFIY: Are we back?

24 MR. TAYLOR: Yes.

25 MR. MALOFIY: All right. Great.

1 Mr. Pidgeon, at what point did you
2 understand that law enforcement was involved in
3 interrogation of Mr. Moorehead?

4 MR. TAYLOR: Objection. That's
5 irrelevant to his return to work.

6 MR. MALOFIY: It's simply whether or
7 not this is a poisoned atmosphere, as to whether or
8 not this is a sham hiring, and whether or not all
9 steps were taken which were transparent and he was
10 apprised of his rights. We're establishing that it
11 was not.

12 Sir, can you answer the question.

13 MR. TAYLOR: Objection. I'm
14 instructing him not to answer. It's irrelevant.

15 MR. MALOFIY: Okay. Did you ever
16 provide the name of the FBI agent allegedly involved
17 with the inquiry into Mr. Moorehead's whereabouts?

18 MR. TAYLOR: Objection, irrelevant.
19 I'm instructing him not to answer.

20 MR. MALOFIY: Did you ever provide a
21 final report from the FBI, or a final clearance from
22 the FBI to Mr. Moorehead before you held, one, the
23 first Loudermill hearing, or this Loudermill
24 hearing, yes or no?

25 MR. TAYLOR: Objection, irrelevant.

1 I'm instructing him not to answer.

2 MR. MALOFIY: Let me move back. What
3 had been done to correct the false statement made
4 about Mr. Moorehead's involvement in the DC riots,
5 if any?

6 MR. TAYLOR: Same objection. I'm
7 instructing him not to answer.

8 MR. MALOFIY: And on what basis?

9 MR. TAYLOR: It's irrelevant.

10 MR. MALOFIY: You understand that it's
11 why he's not coming to work because of this
12 poisonous and hostile environment created by the
13 District?

14 MR. TAYLOR: Are you asking me or him?

15 MR. MALOFIY: I'm asking you.

16 MR. TAYLOR: I'm not answering your
17 questions.

18 MR. MALOFIY: Okay. So you understand
19 that -- you understand why it's relevant now. I'm
20 going if put why it's relevant on the record.

21 MR. TAYLOR: I'm not answering your
22 questions.

23 MR. MALOFIY: When a judge looks at
24 this, or when a hearing officer looks at this they
25 understand why it's relevant, because we're

1 objecting to it because the process has been unfair.
2 The process is also unjust. But let me move
3 forward.

4 What has been done to assuage any
5 concerns Mr. Moorehead had about returning to school
6 because of the hostilities towards him?

7 MR. TAYLOR: Objection, irrelevant.
8 Instruct him not to answer.

9 MR. MALOFIY: Let me clarify why it's
10 relevant. It's relevant because Mr. Moorehead
11 received death threats to him and his family. Mr.
12 Moorehead has put up special cameras at his house.
13 Mr. Moorehead had to go and have interactions with
14 the police, all of which the District knew. And so
15 why I'm asking what steps were taken it's because
16 there is anger and animosity towards Mr. Moorehead
17 from the community which is manufactured by the
18 District's failure to correct the record for seven
19 months. So I'm asking you, you want him to return
20 to school, what steps has the school taken to
21 address his concern that it would be a safe and not
22 a hostile environment, what steps if any?

23 MR. TAYLOR: I've already objected.

24 MR. MALOFIY: Are you going to
25 instruct him not to answer?

1 MR. TAYLOR: Yes.

2 MR. MALOFIY: All right. Does the
3 School Board feel that accountability matters?

4 MR. TAYLOR: Objection. Instruct him
5 not to answer. I'm not even clear what that means.
6 Can you clarify?

7 MR. MALOFIY: Yeah. There's something
8 called accountability, and it's something you teach
9 your kids, and something you teach people you have
10 relationships with, your employees, people you
11 interact with.

12 MR. TAYLOR: Are you asking him what's
13 in the mind of the School Board members?

14 MR. MALOFIY: I want to know if
15 accountability matters, because we are having a
16 disconnect here, and I want to understand, does
17 accountability matter to the School Board?

18 MR. TAYLOR: Again, I'm not -- I'm not
19 sure what you mean by that.

20 MR. MALOFIY: It's either yes or no.
21 That's the answer.

22 MR. TAYLOR: Well, if you even
23 understand what he means about that.

24 MR. PIDGEON: I don't know what the
25 School Board is thinking.

1 MR. MALOFIY: Did you ever publicly
2 admit -- you're instructing him not to answer the
3 last one about accountability, right?

4 MR. TAYLOR: Correct -- well, he said
5 he doesn't understand the question.

6 MR. MALOFIY: Oh. Do you understand
7 what accountability is, sir?

8 MR. PIDGEON: Yeah.

9 MR. TAYLOR: What is accountability to
10 you?

11 MR. PIDGEON: How is that relevant?

12 MR. TAYLOR: You can answer.

13 MR. MALOFIY: You can't look to your
14 counsel for answers. I'm asking you. You said you
15 knew what accountability is. What is it, sir?

16 MR. TAYLOR: Objection. He's not a
17 dictionary. Do you have another question?

18 MR. MALOFIY: Sir, does the word
19 accountability confuse you?

20 MR. TAYLOR: Objection, irrelevant.

21 MR. MALOFIY: Let me read you the
22 definition, just for everyone's benefit.

23 MR. TAYLOR: I'm going to object to
24 any reading of the dictionary or any other source of
25 the definition of the meaning of words.

1 MR. MALOFIY: The whole purpose of
2 this is to be clear. Accountability, the fact or
3 condition of being accountable and responsible,
4 responsibility. Does that clarify it for you?

5 No? No answer? Okay.

6 Let me just -- so does responsibility
7 mean anything to the School Board?

8 MR. TAYLOR: Objection.

9 MR. MALOFIY: Are you instructing him
10 not to answer?

11 MR. TAYLOR: Yes, I'm instructing him
12 not to answer.

13 MR. MALOFIY: After learning that Mr.
14 Moorehead was not involved in the violent
15 insurrection on the Capitol, what steps did the
16 School Board or the School District take, if any?

17 MR. TAYLOR: Objection. The documents
18 speak for the actions and decisions of the School
19 Board.

20 MR. MALOFIY: Right. That's a private
21 document, correct, sir?

22 MR. TAYLOR: It's a what?

23 MR. MALOFIY: A private document,
24 correct?

25 MR. TAYLOR: What do you mean a

1 private document?

2 MR. MALOFIY: Did you post that and
3 notify your community that, hey, he was not involved
4 in the protest?

5 I'm asking the witness, I'm asking
6 questions of this witness, not you.

7 MR. TAYLOR: I'm not going to let him
8 answer if I don't understand the question is the
9 basis for the objection. So until I understand it
10 and I feel comfortable with it, that I can give him
11 legal advice, but no, I don't understand your
12 question.

13 MR. MALOFIY: Let me break it down.
14 And I appreciate the objection.

15 Mr. Pidgeon, you previously admitted
16 that the January 7 statement was wrong. Why did you
17 not publicly correct it?

18 MR. TAYLOR: Wait a minute. I'm
19 sorry. I don't mean to interrupt. He previously
20 admitted to what? I don't understand what you're
21 talking about.

22 MR. MALOFIY: It's not for you to
23 understand, it's for Mr. Pidgeon.

24 MR. TAYLOR: No, no, that's not the
25 way it works. I'm not going to let him answer that.

1 I have to understand it for a basis for the
2 objection. Now you're saying he made a private
3 admission?

4 MR. MALOFIY: You know what, you're
5 right. Let me go to that document. Sorry. And
6 maybe it wasn't clear. There's a lot of dates here,
7 and I may be wrong. One second.

8 Do you remember your letter of July
9 16, 2021, return to teaching assignment, which you
10 wrote and directed to Mr. Moorehead, Mr. Pidgeon?

11 MR. PIDGEON: Should I answer that
12 one?

13 MR. TAYLOR: Yes.

14 MR. PIDGEON: Yes.

15 MR. Malofiy: And you would agree you
16 did not address that to counsel, myself, correct?

17 MR. TAYLOR: Objection, asked and
18 answered.

19 MR. MALOFIY: So I guess you stipulate
20 to that?

21 MR. TAYLOR: No, I didn't stipulate to
22 anything. There's no stipulation on anything.

23 MR. MALOFIY: Just to be clear, you
24 didn't provide this to me as his counsel, correct?

25 MR. TAYLOR: Objection, asked and

1 answered. We've gone over this already.

2 MR. MALOFIY: We've going over a
3 specific document.

4 MR. TAYLOR: It's irrelevant to
5 whether he returned to work or not. Do you have
6 another question?

7 MR. MALOFIY: No, it is. It's the
8 most important thing here. And if you can't
9 establish your notice timeline to counsel --

10 MR. TAYLOR: I can establish that he
11 was aware he had to return to work.

12 MR. MALOFIY: I'm not asking you.

13 MR. TAYLOR: Well, I haven't asked you
14 a lot of things, but you're allowed to talk. I'm
15 going to talk as well.

16 MR. MALOFIY: Well, I'm asking
17 questions, not you.

18 MR. TAYLOR: I'm going to interrupt
19 you the way you interrupted me. Do you have another
20 question?

21 MR. MALOFIY: Yeah, I do.

22 Do you agree that nowhere on this July
23 16 letter does it indicate it was sent to counsel?

24 MR. TAYLOR: Objection. Okay. I'm
25 instructing him not answer. The basis is it's been

1 asked and answered is the basis of the objection,
2 and on the basis of endless argument. We already
3 established the fact as to that. Do you have
4 another question?

5 MR. MALOFIY: I'll move forward. I'm
6 not going to argue with you. I'm not going to
7 bicker with you. We're both above that.

8 MR. TAYLOR: I agree.

9 MR. MALOFIY: I agree too.

10 After fully investigating your
11 involvement in the events of January 6, 2021 in
12 Washington DC the District has concluded that your
13 presence in the January 6 gathering does not violate
14 School Board Policy 419 relating to teacher
15 non-school activity. Do you see that, sir, the
16 first paragraph?

17 MR. PIDGEON: Yes.

18 MR. MALOFIY: Did you ever notify the
19 public of this fact, yes or no.

20 MR. TAYLOR: Objection. That's not
21 relevant to returning to work.

22 MR. MALOFIY: Sir, did you ever notify
23 the --

24 MR. TAYLOR: I'm sorry, I'm
25 instructing him not to answer. It's irrelevant.

1 MR. MALOFIY: Okay. These are
2 speaking objections, number one. Number two, you're
3 coaching the witness through your objections.

4 MR. TAYLOR: No, I'm instructing him
5 not to answer.

6 MR. PIDGEON: I'm not a witness.

7 MR. MALOFIY: Whether or not it's a
8 hostile work environment is directly on point to
9 whether or not he can return. It's directly on
10 point to our stated reason in every single letter.

11 MR. TAYLOR: That's your point, and
12 and that's your argument, and I disagree.

13 MR. MALOFIY: You want to manufacture
14 a record that's -- you can disagree, and I'm going
15 to ask the question.

16 MR. TAYLOR: And I'll object.

17 MR. MALOFIY: Great. Sir, after fully
18 investigating your involvement in the events of
19 January 6, 2021 in Washington DC, the District has
20 concluded that your presence at the January 6
21 gathering does not violate School Board Policy 419
22 relating to teacher non-school activities. Did you
23 ever notify the public of that conclusion?

24 MR. TAYLOR: Objection as irrelevant.
25 I'm instructing him not to answer.

1 MR. MALOFIY: Sir, do you have any
2 documents you can point to instructing the public
3 that the concluded investigation has shown that Mr.
4 Moorehead did nothing by attending the events of
5 January 6?

6 MR. TAYLOR: Same objection. I'm
7 instructing him not to answer.

8 MR. MALOFIY: Mr. Pidgeon, are you
9 familiar with the Collective Bargaining Agreement,
10 yes or no?

11 MR. TAYLOR: You can answer.

12 MR. PIDGEON: Yes.

13 MR. MALOFIY: Are you familiar with
14 Article 1, just cause.

15 MR. PIDGEON: Yes.

16 MR. MALOFIY: It says, no employee
17 shall be reprimanded in writing or disciplined
18 without just cause. Do you see that?

19 MR. PIDGEON: I don't see it because I
20 don't have it in front of me.

21 MR. MALOFIY: Oh, I apologize. Are
22 you familiar with Section A of Article 10.

23 MR. PIDGEON: I am familiar with it
24 but I can't quote it.

25 MR. MALOFIY: Okay. What was the just

1 cause to suspend Mr. Moorehead without pay?

2 MR. TAYLOR: Objection.

3 MR. PIDGEON: I don't mind answering
4 that one.

5 MR. TAYLOR: Okay.

6 MR. PIDGEON: He's never been
7 suspended without pay. As I said, that was a
8 mistake, and that will be corrected.

9 MR. MALOFIY: Okay. Well, I mean,
10 what was the just cause for suspending him with pay?

11 MR. TAYLOR: Objection. It's
12 irrelevant. I'm instructing him not to answer.

13 MR. MALOFIY: Okay. Let me move to
14 something else. Are you familiar with Section N,
15 any criticism by Administrator or Board member of a
16 member of the bargaining unit shall be made in
17 confidence, and not in the presence of students,
18 parents, or at a public gathering, unless the same
19 is subject at a hearing provided by applicable
20 statute of this Commonwealth. Are you familiar with
21 that?

22 MR. TAYLOR: Objection, irrelevant.
23 I'm instructing you not to answer.

24 MR. MALOFIY: I'm just asking, are you
25 familiar with that?

1 MR. PIDGEON: I am familiar with that.

2 MR. TAYLOR: Do you know why
3 superintendent Parker and the School District
4 comment on the Mr. Moorehead publicly without
5 providing him -- publicly and not in confidence?

6 MR. TAYLOR: Objection, irrelevant,
7 I'm instructing him not to answer.

8 MR. MALOFIY: Grounds?

9 MR. TAYLOR: It's irrelevant.

10 MR. MALOFIY: It's irrelevant. So
11 you feel that it's irrelevant whether or not there
12 was cause to suspend him in the first place, whether
13 or not there was cause to take away his pay?

14 MR. TAYLOR: Are you asking me a
15 question?

16 MR. MALOFIY: Yeah, I'm asking -- I
17 want to understand your grounds for your objection.

18 MR. TAYLOR: My grounds are clear.
19 I've stated it.

20 MR. MALOFIY: And I just want to make
21 it clear so I can respond to it when we have a
22 master or hearing officer or a judge. It's your
23 position that whether or not there was just cause to
24 suspend Mr. Moorehead, that's irrelevant. You also
25 think that whether or not following the Collective

1 Bargain Agreement, you feel that's irrelevant too.
2 You feel that whether or not Mr. Pidgeon is familiar
3 with the Collective Bargaining Agreement is
4 irrelevant as well?

5 MR. TAYLOR: Mr. Malofiy, since
6 there's no judge that's going to review this for
7 this argument about my objection, my objection is my
8 objection.

9 MR. MALOFIY: Fair enough. So you're
10 going to object to any question about the Collective
11 Bargaining Agreement, correct?

12 MR. TAYLOR: No, I listen to every
13 question before I make a decision. I'm objecting to
14 that one, and any that are irrelevant as well.

15 MR. MALOFIY: Do you know why
16 criticism was made on two separate days of Mr.
17 Moorehead publicly rather than in confidence?

18 MR. TAYLOR: Objection, irrelevant.
19 I'm instructing him not to answer.

20 MR. MALOFIY: Fair enough. Let me
21 just go to this question and I'll move past the
22 Collective Bargaining Agreement.

23 Section A, no employee shall be
24 reprimanded in writing or disciplined without just
25 cause. You said you're familiar with that. And

1 then it states whenever, one, the District has made
2 a prior determination that it is considering
3 disciplinary action against any member of the
4 bargaining unit, and two, the District requests the
5 member of the bargaining unit appear before any
6 maybe of the Administration, the District shall
7 clearly inform the member of the nature of the
8 meeting and the event that the meeting is accusatory
9 in nature. The District shall advise the member of
10 his or her right to representation, and shall
11 provide opportunity for the member to obtain such
12 representation. Are you familiar with those
13 provisions?

14 MR. PIDGEON: Yes, I am.

15 MR. MALOFIY: Besides the FBI, what
16 other law enforcement did you conceal that was
17 involved in the questioning of Mr. Moorehead's
18 whereabouts?

19 MR. TAYLOR: Can you restate the
20 question? I didn't hear it.

21 MR. MALOFIY: Mr. Court Reporter, can
22 you repeat the question.

23 (The last question was read as
24 follows: Besides the FBI what other law
25 enforcement did you conceal that was involved in the

1 questions of Mr. Moorehead's whereabouts?)

2 MR. TAYLOR: Thank you. Objection,
3 irrelevant. I'm instructing him not to answer.

4 MR. MALOFIY: Do you believe that a
5 transparent Loudermill hearing is important, Mr.
6 Pidgeon?

7 MR. TAYLOR: Objection. I don't see
8 the relevance.

9 MR. MALOFIY: Well, that's telling.
10 That's telling me you don't see that
11 transparency is important in the Loudermill hearing.
12 Okay.

13 MR. TAYLOR: I'm not even going to
14 respond to that, to your insult.

15 MR. MALOFIY: It's not an insult.
16 It's an observation and a reaction to your statement
17 that you don't think that it's important. I mean,
18 if you find your statement insulting I do too. But
19 it's not directed toward you, it's directed toward
20 how the process has been followed is completely
21 deficient of --

22 MR. TAYLOR: Are you asking him to
23 draw a conclusion, a legal conclusion about this
24 proceeding? Is that what you're saying?

25 MR. MALOFIY: Mr. Court Reporter, can

1 you go back to my question, please.

2 (The last question was read as
3 follows: Do you believe that a transparent
4 Loudermill hearing is important?)

5 MR. TAYLOR: So you're asking about
6 Loudermill generally, not necessarily this one? I'm
7 not clear about your question.

8 MR. MALOFIY: Yeah, I'll ask generally
9 and then I'll ask specifically.

10 Do you believe that transparency is
11 important in a Loudermill hearing, Mr. Pidgeon, yes
12 or no?

13 MR. PIDGEON: Yes.

14 MR. MALOFIY: Do you believe that
15 transparency is important to Mr. Moorehead's
16 Loudermill hearing, is important?

17 MR. TAYLOR: Objection. I don't see
18 the relevance.

19 MR. MALOFIY: Okay. Would you like me
20 to move on?

21 MR. TAYLOR: Yes, please. Thank you.

22 MR. MALOFIY: Okay. Did anyone tell
23 you to leave counsel off of the legal communications
24 which you provided to my client?

25 MR. TAYLOR: I'm sorry, I didn't me to

1 cut you off. Objection. This has been -- we've
2 gone over this numerous times already.

3 MR. MALOFIY: No, I'm curious if
4 anyone specifically directed him to not email me.

5 MR. TAYLOR: I'm instructing him not
6 to answer.

7 MR. MALOFIY: Does any of that go to
8 attorney-client privilege?

9 MR. TAYLOR: Yes, it does.

10 MR. MALOFIY: Okay. All right. Well
11 then, that's telling.

12 MR. TAYLOR: Telling what? Telling
13 what?

14 MR. MALOFIY: That's fine. There's no
15 objection if there's no attorney-client --

16 MR. TAYLOR: You're making some
17 observation about my conduct.

18 MR. MALOFIY: No, not your conduct.
19 It's about your instructions for him not to answer
20 based on attorney-client privilege. If there's no
21 attorney-client communication then there would be no
22 privilege in that regard. If there is, then it can
23 be invoked. That's all. But I'll move forward.

24 I honestly don't believe Mr. Freund
25 would have told Mr. Pidgeon to not copy me or to not

1 really address all communications to me. I can't
2 imagine that.

3 MR. TAYLOR: Is that a question?

4 MR. MALOFIY: I'm trying to clarify
5 concerning -- I'm trying to say that I believe King
6 Spry is a good, decent firm. I believe you're a
7 good and decent lawyer, and I believe Mr. Freund is
8 a good and decent lawyer. I don't believe Mr.
9 Freund would ever have told Mr. Pidgeon, do not
10 copy, do not send communications to Mr. Malofiy as
11 requested and leave him off, and also don't copy him
12 in. I can't imagine that happened.

13 MR. TAYLOR: Mr. Freund is a decent
14 man. We've established that, yes.

15 MR. MALOFIY: Right. Okay. Give me a
16 few minutes.

17 MR. TAYLOR: Sure.

18 MR. MALOFIY: I may not even -- I just
19 want to look over my notes here. I'm not going to
20 move from the table here. I just want to look over
21 my notes.

22 (Discussion off the record.)

23 MR. MALOFIY: I have just a few more
24 minor things. One is more a request. I want to put
25 it as a question. Now will you agree to forward

1 me -- excuse me, now will you agree to address all
2 communications to my client to my attention? Now
3 that I've been so clear. Is that a problem, Mr.
4 Pidgeon? It's what's required by the law.

5 MR. TAYLOR: I'll advise Mr. Pidgeon
6 what's required by the law. I'll take care of that.

7 MR. MALOFIY: Do you have see any
8 problem in sending me legal communications you send
9 to my client?

10 MR. TAYLOR: Does he have --

11 MR. MALOFIY: Counsel, you don't see a
12 problem with that? I know Mr. Freund didn't, but it
13 never happened like it's supposed to.

14 MR. TAYLOR: You will get what's
15 supposed to be sent to you.

16 MR. MALOFIY: All right. Well, the
17 request has been made let it show on the record.

18 We are also going to request anything
19 that has been concealed or hidden during the
20 Loudermill process all the way back to January,
21 including communications with law enforcement,
22 reports from law enforcement, names and contacts
23 from law enforcement, including the FBI that was
24 disclosed many, many months later, anything else
25 that was hidden.

1 MR. TAYLOR: I'm not going to dignify
2 that.

3 MR. MALOFIY: I know you're not.

4 MR. TAYLOR: Nothing has been hidden.

5 MR. MALOFIY: This is what happened,
6 and it has been. And it has been. You would hope
7 that if you were sitting down for a hearing you
8 would have been -- you would have been -- you would
9 have been informed that there was FBI involvement.

10 MR. TAYLOR: But that's not relevant
11 to his return, to his failure to respond to his
12 return to work letter.

13 MR. MALOFIY: Right. I know you --

14 MR. TAYLOR: All these other arguments
15 and what happened in January is not relevant.

16 MR. MALOFIY: It goes to whether or
17 not there is transparency in the process, whether or
18 not this is a sham hearing, or whether it isn't,
19 whether or not you're having this hearing to -- to
20 terminate him, or to recommend termination, because
21 he failed to appear for his duties, or whether or
22 not you already terminated him by not paying him
23 before. And I understand that was a mistake,
24 allegedly. But I think we can look at a lot of
25 things and call them mistakes, and mistakes should

1 be corrected. So let me just ask my question --
2 excuse me, let me put my statement on the record.

3 If there's any involvement from police
4 or law enforcement, emails, phone calls, voicemails,
5 reports, clearings, you know, does the School
6 District know that the FBI and law enforcement
7 cleared Mr. Moorehead all the way back in January
8 and failed to state it on the record, did that
9 happen, Mr. Pidgeon?

10 MR. TAYLOR: We are done questions.
11 You're making a statement.

12 MR. MALOFIY: No, I'm not. I'm asking
13 him. Did that happen?

14 MR. TAYLOR: Objection. I'm going if
15 instruct him not to answer. That's irrelevant.

16 MR. MALOFIY: Really? It's relevant
17 whether or not the basis --

18 MR. TAYLOR: Mr. Malofiy, I've already
19 made my objection.

20 MR. MALOFIY: Fair enough. So we'll
21 let that one stand too. We are requesting any and
22 all documents or things that were provided by law
23 enforcement, emails, letters, FBI or otherwise,
24 regarding Mr. Moorehead that was not provided, that
25 has been concealed, and the identity of those

1 individuals so we can do a thorough investigation,
2 because we're not going to let this rest. That's
3 number one. I'm warning the District. I'm warning
4 counsel. I'm warning Mr. Pidgeon. We're not going
5 to let this rest. Because once that information is
6 learned it's doing to compound the wrong that has
7 visited my client.

8 MR. TAYLOR: No response to that.

9 MR. MALOFIY: And it's also going to
10 have tremendous fallout within the District to those
11 who were responsible and failed to bring this
12 forward, or bring transparency to this Loudermill
13 process.

14 Lastly, our court reporter, I thank
15 you for your diligence and your time and your
16 efforts. We do incorporate all our documents that
17 we did submit. And we thank you for your patience.
18 I know it's a difficult record. I just need to get
19 your contact information so we do have a record of
20 that.

21 MR. TAYLOR: I would like to respond
22 for purpose of the record that Mr. Malofiy and his
23 client have been provided every document relevant to
24 the purposes of today's Loudermill hearing.

25 MR. MALOFIY: We object to that,

1 because I was never -- you can't say that. You
2 can't say that they received notice. I was the
3 person to receive notice. I'm the attorney.

4 MR. TAYLOR: That is your position.
5 That is your position. You and I can go back and
6 forth for the next four or five hours. That is your
7 position. I understand your position.

8 MR. MALOFIY: I understand. Our
9 position is that I'm counsel of record. I was never
10 sent any of the legally important documents, any
11 documents from Mr. Pidgeon relating to my client,
12 which should have been directed to my attention,
13 number one. Number two, I wasn't even provided a
14 copy of those, or a carbon copy of those, of those
15 communications. So notice was not proper, in any --
16 in any -- in any way, shape or form. More
17 importantly, counsel knows that once counsel is
18 involved communications are supposed to come to
19 counsel. And it's because the client doesn't know
20 his rights, and the client is instructed that all
21 communications should be handled through counsel
22 once counsel is involved.

23 Anyway, that's what I have to say.
24 I'm disappointed that the School District hasn't
25 corrected the record. I'm disappointed that my

1 client's reputation has been tarnished and harmed.
2 And he's a good teacher who really cared about his
3 students. And I'm disappointed that this process
4 has not been transparent. My objection is on the
5 record.

6 I appreciate your advocacy, Mr.
7 Taylor, and I appreciate Mr. Freund and your firm.
8 I know you're in a tough position, but, you know, I
9 guess we'll have to just address this through the
10 court system.

11 MR. TAYLOR: And I have confidence
12 that all of the -- everything we've heard today, all
13 of the documents will be taken into consideration by
14 the Administration in making their recommendation.

15 MR. MALOFIY: Just to be clear,
16 although I -- I know we sparred back and forth, I
17 have no ill will or animosity towards you.

18 MR. TAYLOR: As do I.

19 MR. MALOFIY: I'm disappointed with
20 the District and the Board, but that will be -- that
21 will be another day. But I appreciate your
22 advocacy, I really do. Thank you.

23 Is the record closed?

24 MR. TAYLOR: Yes. It is.

25 MR. MALOFIY: All right. Thank you.

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(Hearing concluded at 2:57 p.m.)

August 1, 2022

I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the within Loudermill hearing, and that this is a correct transcript of the same.

James P. Gallagher III
Registered Diplomate Reporter
Notary Public

EXHIBIT 32



31 South Penn Street ■ P.O. Box 328 ■ Allentown, PA 18105
Administration Center ■ 484-765-4231 ■ Fax: 484-765-4140

Anthony Pidgeon
Executive Director of Human Resources
pidgeona@allentownsd.org

October 12, 2021

**Via Certified Mail, Return Receipt Requested
and First Class Mail**

Jason Moorehead
5360 Celia Drive
Allentown, PA 18106

STATEMENT OF CHARGES AND NOTICE OF HEARING

Dear Mr. Moorehead:

You are hereby notified, pursuant to Chapter XI of the Public School Code, that the Allentown School District will recommend to the Board of Directors that you be removed and dismissed from your employment as a social studies teacher at Raub Middle School.

Pursuant to the Public School Code of Section 1122, the School District Administration has cause for your termination from employment by the ASD for reasons of “your willful neglect of duties” in failing or refusing to report to your teaching assignment on the first day of school for teachers for the 2021-2022 School Year and for your repeated representations through your counsel that you do not intend to return to teaching at the Allentown School District.

You are hereby notified that, pursuant to Article XI of the Public-School Code of 1949, as amended the Allentown School District Board of School Directors will appoint a hearing officer and conduct a hearing for the purpose of determining whether you should be dismissed from your employment as a professional employee. A hearing for the purpose has been scheduled for October 25, 2021 at 1:00 p.m., in the Administrative Offices of the school district located at 31 South Penn St, Allentown, PA 18102. The Administration will recommend that you be dismissed on the basis of the evidence and School Code charges described above.

You are hereby requested to confirm whether you will exercise your right to appear and present evidence at the above scheduled hearing on or before the close of business on October 22, 2021.

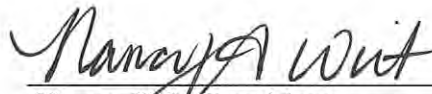
At the hearing, you will have the following rights:

1. The right to be represented by counsel;
2. The right to hear the witnesses and evidence against you and to cross examine said witnesses;
3. The right to present witnesses and evidence on your own behalf and to testify on your own behalf;
4. The right to have your choice of either a public or a private hearing; and
5. All other rights guaranteed to you by the Constitution and applicable law.

If you do not have an attorney, you may contact the Lawyer Referral Service of the Lehigh County Bar Association. If you request a hearing and intend to have legal representation at your hearing, please have your lawyer contact the administration's counsel listed below on or before the date your confirmation is required, which is stated above.

If you have not already done so, you are directed immediately to surrender and deliver to the office of the Superintendent, any and all papers, property and effects of the District in your possession including any keys to School District property and any electronic equipment issued to you for use.

If you have any questions, you may feel free to contact or have your attorney contact John E. Freund, III, Esquire, at King, Spry, Herman, Freund & Faul, One West Broad Street, Suite 700, Bethlehem, PA 18018 (610)332-0390, who will be representing the administration in the prosecution of this case.



Nancy Wilt, President
Board of Directors
Allentown School District

Attest:



William Hargett, Board Secretary

cc: John E. Freund, III, Esquire

EXHIBIT 33

Thursday, November 18, 2021

The Board of Directors submits the following for discussion and action:

- A. Motion to ratify the appointment of Jeffrey T. Sultanik Esq. of Fox Rothschild LLP to be the board appointed hearing officer with respect to the charges of dismissal filed by Allentown School District Administration relating to Employee 27958.
- B. Motion to approve the Board Governance Consulting Contract with Synergistic Solutions commencing on July 1, 2021 through June 30, 2022, unless terminated by either party upon 30 days' written notice.

EXHIBIT 34

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

PREHEARING MEMORANDUM NO. 2 OF THE ALLENTOWN SCHOOL DISTRICT

I. INTRODUCTION

Pursuant to the Prehearing Memorandum Order No. 2 of Hearing Officer Jeffrey T. Sultanik, Esquire, the Allentown School District, by and through, their Special Counsel, King Spry Herman Freund and Faul, LLC, submits the herein Prehearing Memorandum.

II. LIST OF WITNESSES

A. Anthony Pidgeon, Executive Director of Human Resources

Offer of Proof: Mr. Pidgeon will testify as to the following:

1. Correspondence between the District and Mr. Moorehead regarding the District's return to work procedure generally as well as correspondence sent to Mr. Moorehead specifically regarding the 2021-2022 school year.
2. That the District conducted a Loudermill Hearing as required by law.
3. Mr. Moorehead has failed to report to his teaching assignment for the 2021-2022 School Year. Mr. Moorehead has communicated that he does not intend to return to employment with Allentown School District for the 2021-2022 school year.

III. STATEMENT OF LEGAL ISSUES

A. Legal Issue Regarding the Charge: Whether or Not Mr. Moorehead Ever Indicated An Intent To Return To Work As Directed And Whether Or Not This Failure To Return To Work Constitutes A Willful Neglect Of Duty Under Pennsylvania School Code Justifying Termination?

Allentown School District's Position: Discipline in the form of termination is justified pursuant to District's practice of terminating employees who fail to report to work as directed. There are no provisions of the Allentown Education Association's Collective Bargaining Agreement with the District that provides relief from reporting to work under the circumstances as outlined by Mr. Moorehead's counsel during his Loudermill hearing. Moreover, there are no

theories of law including under the Pennsylvania School Code that provide Mr. Moorehead a recognized basis under law from reporting to work as directed.

IV. SUPPLEMENTAL LEGAL ISSUES

The Allentown School District identifies the below listed legal issues and submits them for consideration to the Hearing Officer in the form of a Motion in Limine.

A. Whether or not publication in a newspaper of general publication of the hearing is required?

Pennsylvania School Code 11-1126 provides that hearings pertaining to the dismissal or termination shall be public unless otherwise requested by the party against whom the complaint is made. 11-1126 does not contain a notice provision similar to the Pennsylvania Open Records Law/Open Meetings law, 65 Pa.C.S. 701 et seq. Disciplinary hearings are not similar or akin to open meetings which permit for public discussion and comment and thus have notice requirements to facilitate same.

Section 1126's allowance for public hearing is not subject to the "public notice" requirements of the Sunshine Act. 42 P.S. §701 et. seq. A hearing conducted by a hearing officer doesn't qualify as an open meeting. The purpose of the hearing will be to create a record to be reviewed by the Board. No discussion on deliberation will occur at the hearing and it is not anticipated that the hearing will be attended by a quorum of Board members. According, newspaper publication, posting and notice to the media and not required or appropriate.

To provide the type of notice presently contemplated by the Pre-Hearing Memorandum No. 2 would lead the public to believe that they have a right to comment on areas of governance typically reserved for executive session but would also create other attendant obligations such as the right to an agenda or the perceived right to question the participants including administration during the course of the proceedings. It is believed that it is Mr. Moorehead's intention is to

create a “show” of the hearing especially in light of his recently filed writ against the District and several administrators.

Such a use of a hearing is not contemplated by the Public School Code, the customary practice of public school districts in Pennsylvania or the policy of the District. For this reason, the District would object to the publication as the expense of the District of the hearing scheduled for November 22, 2021. A public hearing and a formally noticed public meeting serve different purposes and as such, the District would object to published notice, especially at District expense to promote Mr. Moorhead’s imminent lawsuit.

B. Whether or Not Testimony, Statements, Documents or Other Reference to the School District’s Internal Investigation Into Mr. Moorehead’s Activities on the Day Of The Insurrection at The United States Capitol Building On January 6, 2021 Will Be Allowed at The Hearing by Mr. Moorehead or His Counsel?

The District conducted into the activities and actions of Mr. Moorehead during the January 6, 2021 insurrection upon the United States Capitol building. The District conducted an extensive investigation and determined that Mr. Moorhead did travel to Washington, D.C. and posted images of himself and statements which appear to be supportive of the insurrection. The investigation ultimately determined that though Mr. Moorehead was in Washington DC in support of former President Trump’s rally on the mall, he had not been present at the Capitol.

The District first became aware of the postings later the same evening and posted a statement on its website regarding its concern over the presence of a staff member at the insurrection. Of significant note, this posting by former Superintendent Thomas Parker did not identify Mr. Moorhead. Publication of his presence was the result solely of Mr. Moorhead’s online actions and activities. Members of the school community, which is comprised primarily of various majority groups, spoke out in protest regarding Mr. Moorehead’s continued employment.

It is expected that Mr. Moorhead and/or his counsel will attempt to offer oral argument and testimony as to the investigation and his allegations as set forth by his counsel at his Loudermill that the public's reaction and outcry at his action has made it impossible for him to return. The issue is not the scope or results of the investigation which concluded with a return to work decision by former Superintendent Marilyn Martinez but rather whether Mr. Moorehead ignored and has continued to ignore a directive of employer.

Evidence is relevant if it has "any tendency to make a fact [of consequence] more or less probable than it would without the evidence." Pa.R.E. 401. Irrelevant evidence is inadmissible. Pa.R.E. 402. Teichman v. Evangelical Community Hospital, 237 A.2d 1082 (Pa. Super. 2020). Moreover, even relevant evidence may be excluded "if its probative value is outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa.R.E. 403. Unfair prejudice, in particular, is a basis for exclusion and is defined as a tendency to suggest decision on an improper basis or diver the jury's attention from its duty of weighing the evidence impartially. Smith v. Morrison, 47 A.3d 131 (Pa. Super. 2012); Commonwealth v. Wright, 961 A.2d 119 (Pa. Super. 2008).

Mr. Moorehead was ordered return to work with teaching guidelines and conditions relating to instruction in the classroom. The scope and result of the investigation provide no legal or contractual basis for failing to return to work in August 2021. All other issues including such blatantly unrelated issues such the identification of the FBI agent(s) involved or the fact that the Executive Director wrote directly to Mr. Moorehead as an employee to provide notice of the Loudermill hearing are completely irrelevant to the issues of Mr. Moorehead's continued refusal to follow a directive.

Moreover, it is believed based upon the content Mr. Moorehead's counsel's objection to the Loudermill that Mr. Moorehead intends to raise various irrelevant and ancillary issues in an attempt to improperly inflame and divert the Board of School Directors who will serve as the triers of fact and ultimate decision makers. As such, the District would request that all testimony and other references to the District's January 6th Insurrection investigation be excluded from the hearing.

V. REQUESTED STIPULATIONS

1. Jason Moorehead received a return to classroom assignment on July 16, 2021, from Executive Director Pidgeon.
2. Jason Moorehead failed to report for his classroom assignment or for any pre-beginning of the year in-service sessions as directed.
3. Though he was allegedly present for the Zoom Loudermill hearing held on September 22, 2021, Jason Moorehead chose not to participate in the proceedings.

VI. SUBPEONA REQUEST

None by the Allentown School District

VII. EXHIBIT LIST

1. Transcript of Loudermill Hearing of September 22, 2021.
2. Notice of Loudermill Hearing of September 13, 2021.
3. Email of Attorney of John Freund of September 17, 2021.
4. Email of Attorney of John Freund of September 15, 2021.
5. Letter of Jason Moorehead of August 16, 2021.
6. Letter of Anthony Pidgeon of August 9, 2021.
7. Letter of Attorney Francis Malofiy of July 30, 2021.
8. Return to Teaching Assignment Letter of July 16, 2021.
9. Employee Attendance Record for Jason Moorehead for August 2021- November 2021.
10. The Collective Bargaining Agreement between the Allentown School District and the Allentown Education Association.

Respectfully submitted,
KING, SPRY, HERMAN, FREUND & FAUL, LLC

By: 
King, Spry, Herman, Freund & Faul

John E. Freund, III, Esquire
Brian J. Taylor, Esquire
One West Broad Street, Suite 700
Bethlehem, Pa. 18018
(610) 332-0390
Special Counsel to the Allentown School District

Date: November 10, 2021

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

**EMPLOYER ALLENTOWN SCHOOL DISTRICT'S BRIEF ON
ELECTION OF REMEDIES AND USE OF HEARING OFFICER**

Employer, Allentown School District, by and through its Special Counsel, submits the following argument in support of its argument that Employee Jason Moorehead selected a School Board Hearing under Pennsylvania School Board Section 11-1122 regarding his possible termination and that the School District is entitled to use of Jeffrey Sultanik, Esquire, the newly appointed District Solicitor as a Hearing Officer.

Section 11-1133 Collective Bargaining for Public Employees provides that:

Nothing contained in section 1121 through 1132 shall be construed to supersede or preempt a provision of a collective bargaining agreement in effect on July 23, 1970 (P.L. 563, No. 195), known as the "Public Employee Relations Act," which agreement provides for the right of the exclusive representative to grieve and arbitrate the validity of a professional employe's termination for just cause or for the causes set forth in section 1122 of this act; however, no agreement shall prohibit the right of a professional employe from exercising his or her rights under the provisions of this act except as herein provided. However, if within ten (10) days after the receipt of the detailed written statement and notice as required by section 1127, the professional employe chooses to exercise his or her right to a hearing, any provision of the collective bargaining agreement relative to the right of the exclusive representative to grieve or arbitrate the termination of such professional employe shall be void. **Professional employes shall have the right to file a grievance under the collective bargaining agreement or request a hearing pursuant to section 1121 through 1132, but not both.**

Caselaw is in accord that doctrine of election remedies operated outlined above as a bar to arbitration of grievance contesting teacher's suspension and school's refusal to realign its professional staff where substantive law and issues raised were same as those previously raised in local agency hearing and subsequently appealed to trial court. Altoona Area Vocational-Technical Educ. Ass'n v. Altoona Area Vocational Technical School, 559 A.2d 974, 126 Pa.Cmwlt. 318, 1989, appeal denied, 575 A.2d 569, 525 Pa. 604.

Like, the Commonwealth Court has noted that a grant of arbitration to teacher who had been dismissed, pursuant to 24 P.S. §11-1133, fulfilled teacher's rights and thus, Secretary of Education did not err in failing to grant teacher a hearing. Scotchlas .v Board of School Directors of Haverford Tp. School Dist., 496 A.2d 916, 91 Pa.Cmwlth. 101, 1985.

The power of a hearing officer to preside over an employment hearing in the context of a public-school employee termination was recently affirmed in Fadzen v. Pittsburgh Public School District, 2019 WL 150 1122 (Pa. Cmwlth 2019). The Fadzen Court explained:

The Commonwealth Court specifically stated we have previously considered whether such a delegation by the board to a hearing officer was an infringement upon an individual's due process rights. In Lewis, a district administrator notified a custodian that his termination had been recommended to the school board. Two disciplinary hearings were held before two hearing officers concerning the proposed discharge. The school board adopted the hearing officers' findings and recommendations that the custodian be terminated due to improper conduct under Section 514 of the Public School Code. The custodian appealed to the common pleas court, which remanded to the board for an additional hearing to afford him an opportunity to address the ultimate fact-finding tribunal, the board.

On appeal, the Court observed that as a non-professional public school employees, the custodian had a property right in the expectation of continued employment and was entitled to procedural due process when being dismissed for cause. To determine the process that was due, we considered the processes of other Commonwealth agencies such as the Unemployment Compensation Board of Review, the State Employees' Retirement Board, and the Pennsylvania State Police. **We noted that these agencies serve as the ultimate arbiters of fact: “[h]owever, the hearings are conducted by referees or fact-finding boards who made recommendations which the decision-making tribunals choose either to follow or to disregard. 690 A.2d at 817, n. 13. We concluded that the board, like many other Commonwealth agencies, “had broad discretion to delegate to hearing officers the task of conducting hearing.” Id at 817.** We ultimately held that a board satisfies the due process rights of a nonprofessional public school employee by:


- (1) appointing a hearing officer to hold a hearing at which Lewis was represented by counsel and had the opportunity to cross-examine witnesses;
- (2) reviewing the officer's findings of facts, conclusions of law and recommendations;
- and (3) making an independent ruling based on the entire record.

Mr. Sultanik has explained to the parties during the pre-hearing conference of November 14, 2021 that he has no knowledge of the underlying facts of Mr. Moorehead's employment or the investigation. Mr. Moorehead has produced no legal authority that a School District is precluded from using its own solicitor as a hearing officer and no factual proof that Mr. Sultanik is biased.

Moreover, even minimal pre-hearing involvement in an investigation does not raise the specter of bias. The Commonwealth Court has previously weighed in regards to Mr. Moorehead's due process argument in holding that a solicitor did not impermissibly commingle his prosecutorial and adjudicative functions in violation of a family's due process rights, even though he drafted the district's residency affidavit, obtained certain public records for administration, and then represented school board by conducting hearing and making evidentiary rulings with regard to family's residency within the district, where solicitor did not initiate prosecution of or act as ultimate adjudicator in family's residency case. Behm v. Wilington Area School District, 996 A.2d 60 (Pa. Commonwealth 2010).

As such, Mr. Moorehead's argument that he did not elect a board hearing or that use of Mr. Sultanik or any other similarly board appointed hearing officer constitutes bias must fail.

Respectfully submitted,
KING, SPRY, HERMAN, FREUND & FAUL, LLC

By: 
King, Spry, Herman, Freund & Faul
John E. Freund, III, Esquire
Brian J. Taylor, Esquire
One West Broad Street, Suite 700
Bethlehem, Pa. 18018
(610)209-5101
Special Counsel to the Allentown School District

Date: November 18, 2021

EXHIBIT 35

From: [AJ Fluehr](#)
To: [Francis Alexander Malofiy](#); jef@kingspry.com; btaylor@kingspry.com
Subject: RE: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues
Date: Thursday, November 18, 2021 4:59:00 PM
Attachments: [Moorehead Exhibits \(SERVED\).pdf](#)

All,

Mr. Moorehead's pretrial memorandum is below:

Witnesses and Document Requests

Jason Moorehead

Tony Pidgeon – He was intimately involved in suspending and disciplining Mr. Moorehead illegally and failing to correct the record. He is now participating and facilitating this sham and predetermined process to cover up the illegal conduct that took place. This includes production of all records related to Jason Moorehead from Jan. 5, 2021 to present.

Thomas Parker - He suspended Jason, defamed him, and otherwise was involved in all aspects of the discipline against Jason

Lucretia Brown – As deputy superintendent, she was intimately involved in all aspects of the actions and omissions against Jason.

Jen Ramos – She was involved in the consideration of Jason's case and never corrected the serious harm done to Jason, while continuing to keep him illegally suspended.

Marilyn Martinez – She was involved in the consideration of Jason's case and did not reinstate him, while continuing to keep him illegally suspended.

John Stanford – Knowledge regarding investigation of Jason Moorehead and refusal to correct the record and location of records. This includes production of all records related to Jason Moorehead from Jan. 5, 2021 to present.

Board Members – They (and all District witnesses) were aware of the illegal and unconstitutional conduct, ratified and supported it, engaged in viewpoint and political affiliation discrimination, allowed Jason to be defamed at Board meetings, and took no steps to supervise the actions and omissions occurring against Jason. They took no steps to correct the record, create a safe and non-hostile environment, they failed to hold those attacking Jason accountable for their misconduct, and they are now participating in a sham hearing process designed to cover up and hide the Board and Defendants' illegal conduct.

Nancy Wilt, Board President

Nicholas Miller, Board Vice-President

Sara J. Brace, Board Member

Lisa A. Conover, Board Member

Phoebe D. Harris, Board Member

Cheryl L. Johnson-Watts, Board Member

Audrey Mathison, Board Member

Charles F. Thiel, Board Member

Linda Vega, Board Member

State Police – They took police report about the death threat to Jason.

FBI Agents who communicated with District about Jason

Sam Stretton, Expert on Scholastic Responsibility [and Attorney Ethics and Constitution](#)

Corporate Designee Fox Rothschild – Any and all information related to Jason Moorehead, and retainer agreements with District including all subparts.

Mark Liebold – Testify regarding discipline and investigation regarding Jason Moorehead, including all related documents.

Statement of Legal Issues

- Mr. Moorehead rejects the notion that this board hearing should be limited to “willful neglect of duties” due to the District claiming he failed to appear for school. This is a pretextual reason to cover up the unconstitutional and defamatory reasons he was suspended, subjected to a hostile work environment, and can no longer return to the school district.
- Not only is a return to the district impossible because of the overtly hostile environment, but upon admitting that Jason did nothing he was accused of, the District refused to correct the record and then placed unconscionable and unacceptable conditions on Jason returning to his employment—ignoring that it would be placing Mr. Moorehead in an unsafe environment.
- The hearing is predetermined.
- The Board is biased and not impartial, and has a substantial interest in the outcome of this matter including but not limited to because a lawsuit is currently pending against it and its members.
- The hearing officer is biased and not impartial being employed by the Board and District.

Supplemental Legal Issues

- The false statement made about Jason which created an irrevocably hostile work environment he cannot return to.
- The illegal viewpoint discrimination that occurred and continues to occur has not been addressed.
- The due process violations that occurred and continue to occur have not been addressed, including the outrageously defamatory statements that have not been corrected.
- The District and Board refusing to acknowledge or correct Mr. Moorehead’s constitutional grievances, and instead unilaterally demanding he admit to wrongful conduct and return to an unsafe environment, and then trying to pretextually fire him for not appearing for work.

Subpoenas

- A subpoena is requested for all of the listed witnesses who are not employees of the district, including Parker, the FBI agent, Liebold, State Police, Lucretia Brown, Jen Ramos, and Marilyn Martinez.

Exhibits

1. Jan. 7 - Parker statement and suspension
2. Jan. 8 - Morning Call article
3. Jan. 21 - Letter from Francis Alexander
4. Jan. 26 - Additional Letter
5. Jan. 28 - Additional Letter
6. Feb. 8 – Email to Freund
7. April 1 - Additional Letter
8. April 9 - First fake Loudermill Notice
9. April 13 – Objection Loudermill Notice
10. May 4 - Objection to Loudermill
11. May 24 - Additional Letter asking for Status of Suspension
12. July 16 - Pidgeon fake reinstatement letter
13. July 30 - Response to Pidgeon
14. Aug 16 - Jason wrote letter to District
15. Sept. 1 - Jason’s pay is cancelled
16. Sept. 9 - Lawsuit filed, and sent to Pidgeon and Freund
17. Sept. 13 – Pidgeon Received
18. Sept. 13 – Notice of Second Fake Loudermill Hearing
19. Feb. 11 Board Hearing Video, and Summary, <https://www.youtube.com/watch?v=02bMYoXUq-s>
20. Letter and Results of Device Investigation
21. Collective Bargaining Agreement
22. Transcript of Loudermill Hearing

Plaintiff requests that hearing be streamed and also have Zoom capability for COVID sensitive witnesses who cannot appear in person.

AJ Fluehr, Esquire
FRANCIS ALEXANDER, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 341-1063
F: (215) 500-1005
aj@francisalexander.com

From: Sultanik, Jeffrey T. [<mailto:JSultanik@foxrothschild.com>]
Sent: Wednesday, October 27, 2021 12:37 AM
To: Francis Alexander Malofiy <francis@francisalexander.com>; btaylor@kingspry.com;
jef@kingspry.com
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr
<aj@francisalexander.com>
Subject: Re: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's
Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues

Thanks! I will confirm via Prehearing Memorandum #2.

From: Francis Alexander Malofiy <francis@francisalexander.com>
Sent: Wednesday, October 27, 2021 12:32 AM
To: Sultanik, Jeffrey T.; btaylor@kingspry.com; jef@kingspry.com
Cc: Francis Alexander Malofiy; AJ Fluehr
Subject: [EXT] RE: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing
Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling
Issues

Dear Counsel,

I just got back to my desk and reconciled my calendar.

Tuesday, November 16th is no good as I have an appellate argument.

I am fairly certain that Monday, November 22, 2021 at 11 am will work.

With every good wish, I am,

Francis Malofiy, Esquire

EXHIBIT 36

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference

1. **Background.** By letter dated October 12, 2021, a Statement of Charges and Notice of Hearing was issued by the Board of Directors of the Allentown School District to Jason Moorehead at his home address via certified mail, return receipt requested, and first class mail. The Allentown School District Administration notified Mr. Moorehead that it has “cause for Mr. Moorehead’s termination from employment by the ASD for reasons of ... willful neglect of duties in failing or refusing to report to [his] teaching assignment on the first day of school for teachers for the 2021-2022 school year and for ... repeated representations through ... counsel that ... [he did] ... not intend to return to teaching at the Allentown School District.”

Based upon the foregoing, a hearing was scheduled on October 25, 2021.

2. **Appointment of Hearing Officer.** The Board of School Directors has appointed my firm and myself, in particular, to perform the functions of a Hearing Officer in this matter. This firm already provides services as Solicitor for the Allentown School District.
3. **Continuance Request.** On Monday, October 18, 2021, at 6:31 p.m. counsel for Jason Moorehead notified counsel for the Administration that he would be unavailable for the “unilaterally scheduled hearing date as the result of being in Houston, Texas.” As part of the continuance request, it is asserted that “some of the witnesses are out of state” and that 45 days was being requested until the hearing was to be scheduled. The decision on the continuance request for 45 days will be addressed at the prehearing conference mentioned in this Prehearing Memorandum. The ultimate decision of the hearing date will be made by myself as Hearing Officer on behalf of the Board. That being said, as the result of my recent appointment in this matter and the close proximity to October 25, 2021, the October 25, 2021, hearing is continued subject to an understanding that we need to quickly schedule a prehearing conference and rapidly move forward with the actual hearing.
4. **Virtual Prehearing Conference.** I am offering the opportunity for a virtual prehearing conference that will take place on any one of the following dates/times:

October 26, 2021 – 12:00 p.m.; 1:00 p.m.; 2:00 p.m.; 3:00 p.m.; 4:00 p.m.

October 28, 2021 – 12:00 p.m.; 1:00 p.m.

October 29, 2021 – 12:00 p.m.; 1:00 p.m.; 2:00 p.m.

Please contact my assistant, Sheryl Wilson (swilson@foxrothschild.com or 610.397.3919), no later than October 25, 2021, about the scheduling of this prehearing conference. If I do not hear from you within this time period, I will unilaterally schedule the prehearing conference and issue a Prehearing Order as the result of what happens at

that conference. Once the virtual prehearing conference is scheduled, I will send you a link to participate in a Webex conference call.

5. **48 Hours Prior to the Prehearing Conference.** 48 hours prior to the prehearing conference, both the District and employee's counsel will be required to prepare a brief memorandum outlining the following:
 - a. List of the names of the witnesses that will be testifying at the hearing with respect to the charge involving Mr. Moorehead engaging in "willful neglect of duties" pursuant to Section 11-1122 of the Public School Code. A brief offer of proof of the testimony of each witness should be included.
 - b. Statement of the legal issue or issues to be addressed by the Hearing Officer with respect to the "willful neglect of duties" charge.
 - c. Suggested dates for a hearing or hearings in this matter.
 - d. Any other supplemental legal issues that need to be addressed.
 - e. Rationale for any extended hearing delay, such as the 45 days requested.
6. **Election of Remedies.** I am presuming that by virtue of this hearing request that Mr. Moorehead has elected a Board level hearing versus a hearing pursuant to the Collective Bargaining Agreement, which would be handled by the Allentown Education Association on behalf of Mr. Moorehead. Please confirm that position in writing.
7. **Court Reporter.** The Hearing Officer/District Solicitor will retain the services of a court reporter for the hearing.
8. **Subpoenas.** If either counsel desires to subpoena any individual to testify, said counsel is to prepare a subpoena and submit it to me for signature. I would request counsel agreement that I will be able to sign the subpoena on behalf of the District. Service shall be the responsibility of counsel.
9. **Stipulations.** Counsel for the parties will confer for the purposes of stipulating to whatever matters they can. I request, but do not require, that the parties attempt to define and agree upon the issues in the stipulation.

Date: 10/21/21



Jeffrey T. Sultanik, Esquire
Hearing Officer

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

Hearing Officer's Prehearing Memorandum No. 2 Scheduling a Prehearing Conference and Hearing

1. **Prehearing Memorandum No. 2.** This Prehearing Memorandum No. 2 is as the result of communications between counsel for the District Administration and counsel for Jason Moorehead. Agreed upon dates/times have been reached for a prehearing conference and a hearing in this matter.
2. **Prehearing Memorandum.** On or before 12:00 p.m. on November 10, 2021, both the District Administration's counsel and the employee's counsel will be required to prepare a prehearing memorandum, which will be emailed to the Hearing Officer and opposing counsel outlining the following:
 - a. List of the names of the witnesses that will be testifying at the hearing with respect to the charge involving Mr. Moorehead engaging in "willful neglect of duties" pursuant to Section 11-1122 of the Public School Code. A brief offer of proof of the testimony of each witness should be included.
 - b. Statement of the legal issue or issues to be addressed by the Hearing Officer with respect to the "willful neglect of duties" charge.
 - c. Any other supplemental legal issues that need to be addressed.
3. **Confirmation from Mr. Moorehead's Counsel that he has elected a Board Level Hearing Versus a Hearing Pursuant to the Collective Bargaining Agreement between the District and the Allentown Education Association, which would be handled by the Allentown Education Association on behalf of Mr. Moorehead through the grievance/arbitration process contained therein.**
4. **Scheduling of Virtual Prehearing Conference.** A virtual prehearing conference will be scheduled to take place based upon the agreement of all parties on November 12, 2021, at 2:00 p.m. The Webex link for the prehearing conference will be as follows:
<https://foxrothschild2.webex.com/foxrothschild2/j.php?MTID=md3f72121520d48e99d641fe14e0359b5>

It is hoped that we will be able to complete the contents of the prehearing conference by 3:00 p.m., but I have scheduled it to 3:30 p.m. in case we reach any issues that cannot be resolved. One of the key elements in the virtual prehearing conference will be the scope of the hearing itself, which will be a public hearing as per the request of Mr. Moorehead. A discussion will also take place as the extent to which counsel and the parties can interface with the media and/or the community during the course of the hearing.

5. **Court Reporter and Advertisement of Hearing.** The Hearing Officer has arranged for a court reporter for the hearing. The transcript will be provided at no cost to the District Administration's counsel and Mr. Moorehead's counsel at the conclusion of the hearing process. The Board will receive a complete copy of the transcript at the conclusion of the hearing.

The Hearing Officer will also arrange for an advertisement to be placed in a newspaper of general circulation within the District consistent with the District's typical advertising requirements publicizing the proposed hearing. Members of the community will not be allowed to speak or participate in the hearing.

6. **Scheduling of Hearing.** Based upon the agreement of the parties, a public adjudicatory hearing will be scheduled for November 22, 2021, from 11:00 a.m.-5:00 p.m. If other hearings are required at the conclusion of this adjudicatory hearing, the Hearing Officer will schedule another hearing or hearings to complete the required testimony.
7. **Exchange of Exhibits.** No later than the close of business on November 18, 2021 (5:00 p.m.), the parties shall arrange to be delivered both electronically and in hard copy all of the intended exhibits for the hearing. Additional exhibits can be admitted at the time of hearing upon establishing good cause or in the case of rebuttal at the time of the hearing. Counsel for the parties are encouraged to stipulate to any factual circumstances or exhibits in this proceeding, which should include but not be limited to the Collective Bargaining Agreement between the Allentown School District and the Allentown Education Association.
8. **Subpoenas.** If either counsel desires to subpoena any individual to testify, said counsel is to prepare a subpoena and submit it to me for signature. I would request counsel agreement that I will be able to sign the subpoena on behalf of the District. Service shall be the responsibility of counsel. To the extent that counsel seeks to subpoena any employee of the District, the subpoena request should be made as quickly as possible so that appropriate arrangements can be made for covering the work of the employee in the District.



Date: 10/27/21

Jeffrey T. Sultanik, Esquire
Hearing Officer

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

**Hearing Officer's Prehearing Memorandum No. 3
In Advance of Prehearing Conference and Hearing**

1. **Prehearing Memorandum No. 3.** This Prehearing Memorandum No. 3 is in advance of the prehearing conference scheduled for November 12, 2021 at 2:00 PM as set forth in paragraph 4 of Prehearing Memorandum No. 2. The purpose is to facilitate and address issues in advance of such virtual prehearing conference.

2. **Hearing Officer Bias and Decision Predetermination.** At the prehearing conference, I will be requesting counsel for Jason Moorehead to provide evidence of a predetermined decision on the part of the School Board. In addition, evidence will be required to show hearing bias on the part of the Hearing Officer, Jeffrey T. Sultanik, of Fox Rothschild LLP.

In particular, I will be requesting evidence and support for the position from counsel for Jason Moorehead if hearing bias on the part of the Board or the Hearing Officer was a matter of concern, why did Mr. Moorehead not avail himself of his right to elect an arbitration remedy pursuant to the Collective Bargaining Agreement between the Allentown School District and the Allentown Education Association in accordance with PA. STAT. ANN. tit. 24 § 11-1133?

3. **Proposed Stipulations.** From reading the prehearing memoranda, I am suggesting the following stipulations that should not be of issue:

- a. The Collective Bargaining Agreement between Allentown School District and the Allentown Education Association.
- b. Transcript of the Loudermill hearing on September 22, 2021.
- c. Notice of Loudermill hearing of September 13, 2021.
- d. Email of Attorney John Freund dated September 17, 2021.
- e. Email of Attorney John Freund dated September 15, 2021.
- f. Letter of Jason Moorehead dated August 16, 2021.
- g. Letter of Anthony Pidgeon dated August 9, 2021.
- h. Letter of Attorney Francis Malofiy of July 30, 2021.
- i. Return to teaching assignment letter of July 16, 2021.

- j. Jason Moorehead received a return to classroom assignment on July 16, 2021 from Executive Director Anthony Pidgeon.
- k. Employee attendance record for Jason Moorehead for August 2021 – November 2021.
- l. Jason Moorehead failed to report for his classroom or for any pre-beginning of the year in service sessions as directed.
- m. Jason Moorehead chose not to participate in the Loudermill proceeding held on September 22, 2021.
- n. In accordance with § 1133 of the Public School Code of 1949, Jason Moorehead elected not to challenge the charges of dismissal pursuant to the Collective Bargaining Agreement between the Allentown School District and the Allentown Education Association, but instead elected for a Board level hearing to challenge the charges that have been filed.

4. **Issues to be Addressed**

- a. Whether or not publication in a newspaper of general publication of the hearing is required?
- b. Whether or not Mr. Moorehead ever indicated an intent to return to work as directed and whether or not this failure to return to work constitutes a willful neglect of duty under § 11-1122 of the Public School Code justifying termination?
- c. Whether or not the Hearing Officer has jurisdiction to address issues beyond the charges brought by the District with respect to “willful neglect of duties” due to the District claim Mr. Moorehead failed to appear for school?
- d. Whether the Hearing Officer has jurisdiction to address the purported overly hostile environment at the District and to compel the District to “correct the record” or addressing whether or not Mr. Moorehead would be subjected to an “unsafe environment?”
- e. Whether the Hearing Officer has authority to address purported defamation claims made by unspecified individuals against Mr. Moorehead in the context of this hearing?

5. **Exchange of Exhibits.** As previously indicated, no later than the close of business on November 18, 2021 (5:00 pm), the parties shall arrange to be delivered both electronically and hard copy all intended exhibits for the hearing.

6. **Subpoenas.** If either counsel desires to subpoena any individual to testify, said counsel is to prepare a subpoena and submit it me for signature. Noted in the list of individuals who may testify in this proceeding by counsel for Mr. Moorehead are a large number of individuals who are no longer employees of the School District. Putting aside the relevancy of

some of the individuals' testimony, the ability to subpoena such individuals, some of whom are out of state, is highly questionable. The logistics of this will have to be addressed at the prehearing conference.

Date: 11/11/21



Jeffrey T. Sultanik, Esquire
Hearing Officer

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

**Hearing Officer's Prehearing Memorandum No. 4
In Advance of Hearing on November 22, 2021**

1. **Prehearing Memorandum No. 4.** This Prehearing Memorandum No. 4 is in advance of the hearing scheduled for November 22, 2021. The purpose is to facilitate and address issues in advance of the hearing and as a follow-up to the prehearing conference which took place virtually on November 12, 2021 from 2:00 p.m. until approximately 3:40 p.m.

2. **Publication of Board Hearing.** The District Administration has raised the issue of whether or not the hearing scheduled for November 22, 2021 needs to be published in a newspaper of general publication as the hearing is not in the nature of a public meeting where public participation will take place under the Sunshine Act. Counsel for Mr. Moorehead has requested an opportunity to research the issue and will provide legal citations of authority by 5:00 p.m. on November 15, 2021.

3. **Exchange of Exhibits, Request for Subpoenas, and List of Witnesses.** As indicated in the previous prehearing memoranda, no later than 5:00 p.m. on November 18, 2021, the parties shall arrange to deliver, both electronically and by hard copy, all intended exhibits for the hearing. Documentation shall also be provided to the Hearing Officer. In addition, counsel for Mr. Moorehead indicated that he will be preparing administrative forms of subpoena for his requested witnesses for the November 22, 2021 public hearing and outlining the relevancy of the information in the context of the November 22, 2021 hearing. While it is understood that the timeline is quite tight, the District Administration shall indicate whether it objects to the issuance of the subpoenas no later than noon on November 19, 2021. I will attempt to make decisions on the issuance of the subpoenas by the end of the day on November 19, 2021 in advance of the hearing on Monday.

4. **Hearing Officer/Board Bias.** By virtue of the discussions which took place in the prehearing conference, the Hearing Officer acknowledges that Mr. Moorehead will preserve his right to raise issues with respect to Hearing Officer and Board bias on any possible appeal, to the extent that one will be necessary at the conclusion of the hearing or hearings. Mr. Moorehead's counsel has agreed to submit a brief on the issue with citations of authority at the commencement of the November 22, 2021 hearing outlining the legal position. While it is not deemed to be necessarily relevant in this proceeding, recognizing that it is a public record, I am providing the parties with a copy of Fox Rothschild LLP's engagement/fee arrangement letter with Allentown School District in our capacity as solicitor. A copy of that is attached as Exhibit A.

5. **Brief on Hearing Bias.** As part of the briefing on Hearing Officer bias and/or Board bias, I am requesting that there be legal support for the position for counsel for Jason Moorehead as to why Mr. Moorehead did not avail himself of his right to elect an arbitration remedy pursuant to the Collective Bargaining Agreement between the Allentown School District and the Allentown Education Association in accordance with Section 11-1133 of the Public School Code of 1949, as amended. This was discussed at length at the prehearing conference. The District

Administration will have the right to address this issue also through briefing at the commencement of the hearing.

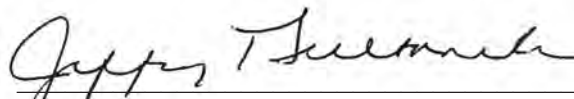
6. **Proposed Stipulations.** Mr. Malofiy was unwilling to agree to any stipulations for the hearing on November 22, 2021. No reason was proffered for the lack of stipulations other than a generalized complaint that the hearing process in place is not fair or equitable and that Mr. Moorehead did not elect this hearing process.

7. **Issues to be Addressed.** Without finally deciding this issue which will be addressed at the commencement of the hearing on November 22, 2021, from the documentation supplied, the Hearing Officer is inclined to rule that the only issue in this proceeding is “whether or not Mr. Moorehead ever indicated an intent to return to work as directed and whether or not his failure to return to work constitutes willful neglect of duty under Section 11-1122 of the Public School Code justifying termination.”

In addition, the Hearing Officer will need to be convinced that evidence of Mr. Moorehead’s purported violations of the Fifth Amendment against self-incrimination will be relevant in this proceeding to either prove bias or the rationale for not returning to work and whether or not the Hearing Officer has jurisdiction to address issues of this nature in this proceeding. Citations of authority will be required.

8. **No Prejudice to Other Legal Actions.** The Hearing Officer was made aware for the first time during the prehearing conference that Mr. Moorehead has instituted a Writ of Summons in the Court of Common Pleas of Lehigh County. Counsel for Mr. Moorehead indicated that the District’s purported constitutional violations and other issues would be addressed in that litigation. Nothing in this proceeding or the Hearing Officer’s jurisdiction is intended to preclude Mr. Moorehead’s rights to litigate that issue in another forum. The Hearing Officer’s jurisdiction is limited to the authority granted under the Public School Code of 1949 in adjudicating charges of dismissal brought by the District Administration.

Date: November 15, 2021



Jeffrey T. Sultanik, Esquire
Hearing Officer

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

**Hearing Officer's Prehearing Memorandum No. 5
In Advance of Hearing on November 22, 2021**

1. **Prehearing Memorandum No. 5.** This Prehearing Memorandum No. 5 is in advance of the hearing scheduled for November 22, 2021. The purpose is to address specifically issues relating to the publication of the Board hearing as referenced in Prehearing Memorandum No. 4, Subparagraph 2, which states:

“The District Administration has raised the issue of whether or not the hearing scheduled for November 22, 2021, needs to be published in a newspaper of general publication as the hearing is not in the nature of a public meeting where public participation will take place under the Sunshine Act. Counsel for Mr. Moorehead has requested an opportunity to research the issue and will provide legal citations of authority by 5:00 p.m. on November 15, 2021.”

2. **Publication Issue.** IV.A. of the District Administration’s Prehearing Memorandum states:

“Pennsylvania School Code Pennsylvania School Code 11-1126 provides that hearings pertaining to the dismissal or termination shall be public unless otherwise requested by the party against whom the complaint is made. 11-1126 does not contain a notice provision similar to the Pennsylvania Open Records Law/Open Meetings Law, 65 Pa. C.S. 701 et seq. Disciplinary hearings are not similar or akin to open meetings which permit for public discussion and comment and thus have notice requirements to facilitate same.”

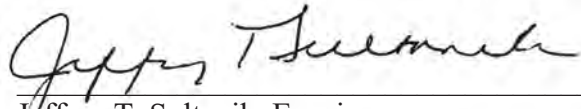
Notwithstanding the fact that counsel for Mr. Moorehead at the Prehearing Conference indicated that he wants to have an opportunity to check the citation of legal authority pertaining to the newspaper advertising requirement, Mr. Malofiy elected not to file any legal brief or legal citation contrary to the position taken by the District Administration as of the 5:00 p.m. deadline on November 15, 2021.

As a result, the Hearing Officer is inclined to review and adopt the legal argument asserted by the District Administration that the upcoming disciplinary hearing is not contemplated to be publicly advertised in a newspaper of general circulation under the School Code.

3. **Hearing Officer’s Position Regarding Publication.** Based upon the foregoing, the Hearing Officer rules that no official advertising of the public hearing on November 22, 2021, is required as there will not be any agency deliberation occurring at that hearing. The Hearing Officer sustains the position of the District Administration and explicitly rules that no newspaper advertisement is required.

4. **Reminder About Request for Subpoenas.** While it may not have been completely clear in Prehearing Memorandum No. 4, all requests for subpoenas, along with the forms of subpoena, need to be in the possession of the Hearing Officer no later than 5:00 p.m. on November 18, 2021. Those requests for subpoenas should be shared with all parties, namely, Mr. Freund/Mr. Taylor on behalf of the District Administration, and myself as Hearing Officer. Service of approved subpoenas will be the responsibility of counsel for the respective parties. As a reminder, it is the Hearing Officer's position that the Hearing Officer's jurisdiction is solely limited to the authority granted under the Public School Code of 1949 in adjudicating the Charges of Dismissal brought by the District Administration. Other issues that can and should be raised in the pending Writ of Summons filed by Mr. Moorehead against the District will be strictly construed by the Hearing Officer to assess whether jurisdiction is provided for in the Public School Code.

Date: November 16, 2021



Jeffrey T. Sultanik, Esquire
Hearing Officer

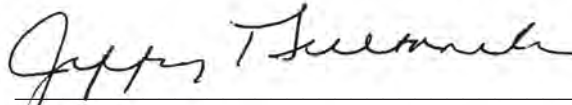
ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

Hearing Officer's Hearing Memorandum No. 6

1. **Establishment of Next Hearing.** The next public hearing for the above matter will take place on December 14, 2021, from 12:00-4:30 p.m. in the Board Room of the Allentown School District Administration Facility located at 31 South Penn Street, P.O. Box 328, Allentown, Pennsylvania 18105.
2. **Follow-Up from November 22, 2021, Hearing.** Subject to being permitted to engage in rebuttal, the District Administration completed its case and Anthony Pidgeon was excused as a witness.
3. **Future Witnesses as Part of Jason Moorehead's Case.** On or before 5:00 p.m. on December 3, 2021, counsel for Mr. Moorehead shall place in writing to the Hearing Officer and counsel for the District Administration the list of intended witnesses and will share any supplemental exhibits associated with such witness testimony with the parties both electronically and via first class mail. Ms. Ramos' subpoena request will still be honored for the December 14, 2021, hearing.

Date: November 23, 2021



Jeffrey T. Sultanik, Esquire
Hearing Officer

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Jason Moorehead

Hearing Officer's Hearing Memorandum No. 7 and Order

1. **Morehead's Proposed Subpoenas for Next Public Hearing:** The next public hearing for the above matter will take place on December 14, 2021, from 12:00-4:30 p.m. in the Board Room of the Allentown School District Administration Facility located at 31 South Penn Street, P.O. Box 328, Allentown, Pennsylvania 18105.

On December 3, 2021, Moorehead provided his proposed witness list for the upcoming hearing. Morehead also proposed subpoenas for the Office of the Superintendent of the Allentown School District and Jesika Steuerwalt, Mr. Moorehead's prior Union attorney.¹ Moorehead also requested that subpoenas for an unnamed FBI Agent that allegedly communicated with the District regarding Mr. Moorehead by re-issued, along with subpoenas for Phoebe Harris and Lisa Conover.

On December 6, 2021, Allentown School District ("District") objected to the issuance of subpoenas and the anticipated expert witness testimony of Samuel Stretton at the December 14 hearing. By email dated December 7, 2021, Moorehead replied to the District's objections.

After reviewing submissions of the Parties, the Hearing Officer makes the following determinations as to each proposed subpoena and/or witness at issue:

- **FBI Agent Subpoena:** the Hearing Officer will not issue this subpoena. It is deficient in that the subpoena lacks specificity and would not yield any testimony relevant to the issues presented at the hearing. This subpoena is quashed.
- **Jesika Steuerwalt:** the Hearing Officer will not issue this subpoena. The offer of proof by Moorehead that his prior union attorney, Ms. Steuerwalt, "was aware of FBI investigation" has no relevance to this hearing as his former counsel was not involved in any employment decision.
- **Phoebe Harris:** the Hearing Officer will not issue this subpoena. The offer of proof by Moorehead relates to Harris's involvement leading up to and at the February 11, 2021 Board meeting. Moorehead was reinstated in August 2021. As such, Harris's actions in February 2021 do not make any fact at issue more or less likely regarding Moorehead's decision to not return to the District after being reinstated.
- **Lisa Conover:** the Hearing Officer will not issue this subpoena. The offer of proof by Moorehead relates to Conover's involvement leading up to and at the February 11, 2021

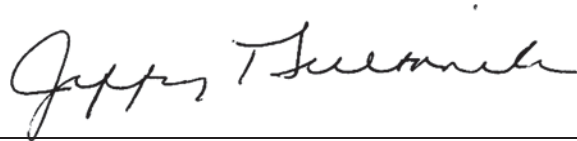
¹ In total, Moorhead has requested the Hearing Officer issue subpoenas for DFS Consulting, Magnet Forensics, Fox Rothschild, "FBI Agent", the Pennsylvania State Police, Linda Vega, Charles Thiel, Audrey Mathison, Mark Liebold, Cheryl Johnson-Watts, Phoebe Harris, Lisa Conover, Sara Brace, Nicholas Miller, Nancy Wilt, John Stanford, Marilyn Martinez, Jen Ramos, Lucretia Brown, Thomas Parker, and Tony Pidgeon, in addition to the new requests on December 3, 2021.

Board meeting. Moorehead was reinstated in August 2021. As such, Conover's actions in February 2021 do not make any fact at issue more or less likely regarding Moorehead's decision to not return to the District after being reinstated.

- Samuel Stretton, Esq.: Before allowing Mr. Stretton's to testify at the hearing, in fairness to the District, Moorehead shall serve on the counsel for the District a true and correct copy of Mr. Stretton's opinion in this case, no later than 12:00pm on December 13, 2021.

2. **Privilege Log**: the District shall provide a log of the documents within Moorehead's employment file which the District is withholding based upon the assertion of privilege. The log must include a reference to the document (page number or bates label), the author of the document, a description of the document, and the privilege asserted, and the basis for why that privilege applies. The log must be provided to counsel for Moorehead no later that 12:00pm on December 13, 2021.

IT IS SO ORDERED,



Jeffrey T. Sultanik, EsquireHearing Officer

Date: December 9, 2021

128262322.1

128666186.1

EXHIBIT 37

From: [AJ Fluehr](#)
To: [Sultanik, Jeffrey T.](#); btaylor@kingspry.com; jef@kingspry.com
Cc: [Francis Alexander Malofiy](#)
Subject: RE: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues
Date: Thursday, November 18, 2021 10:51:00 PM
Attachments: [DFS Consulting Subpoena.pdf](#)
[Magnet Foresnics Subpoena.pdf](#)
[Mark Liebold Subpoena.pdf](#)
[Fox Rothschild Subpoena.pdf](#)
[FBI Agent Subpoena.pdf](#)
[State Police Officer Subpoena.pdf](#)
[Linda Vega Subpoena.pdf](#)
[Charles Thiel Subpoena.pdf](#)
[Audrey Mathison Subpoena.pdf](#)
[Cheryl Johnson-Watts Subpoena.pdf](#)
[Phoebe Harris Subpoena.pdf](#)
[Lisa Conover Subpoena.pdf](#)
[Sara J. Brace Subpoena.pdf](#)
[Nicholas Miller Subpoena.pdf](#)
[Nancy Wilt Subpoena.pdf](#)
[John Stanford Subpoena.pdf](#)
[Marilyn Martinez Subpoena.pdf](#)
[Jen Ramos Subpoena.pdf](#)
[Lucretia Brown Subpoena.pdf](#)
[Thomas Parker Subpoena.pdf](#)
[Tony Pidgeon Subpoena.pdf](#)

Mr. Sultanik,

Nearly everything in this email is rejected and objected to. We never discussed or agreed to most of these points. In fact, most of this is contrary to our discussion on November 12, 2021.

We discussed and agreed on November 12 that Jason Moorehead would initially present evidence of predetermination and bias, and briefing, on Monday. You said you would then make a decision on bias.

We also indicated, as we always have, that we would present voluminous evidence that the cited reason by the Board for Mr. Moorehead's termination for "willful neglect of duties" is entirely pretextual and false.

Now, unilaterally, you are trying to change the agreed upon terms. This is exactly why I asked that our prior Zoom conference of Nov. 12 be recorded for transparency, which you refused to allow. At that time you first denied the Board and its members were your clients, and then later admitted that you were their counsel. We are still waiting for the retainer agreement and engagement letter (which was a corrupted file and could not be opened).

You write that ASD will present its case first, and then Mr. Moorehead will "likely" only be permitted to respond at another undetermined time. This is absolutely rejected. **First**, the bias of the board and the hearing officer need to be addressed first. This will require the testimony of witnesses. You are attempting to avoid addressing this, which is further evidence of bias. **Second**, Jason Moorehead objects to your ridiculous attempt to divide the hearing up to prevent Mr. Moorehead from effectively rebutting the District's case.

Regarding subpoenas, at the conference you stated that some of the listed witnesses were no longer

employees and would need to be subpoenaed. Now, your email states that all witnesses need to be subpoenaed. Are you, as the allegedly impartial hearing officer, telling me that a party to the proceeding will not be producing the identified witnesses? This was absolutely not contemplated, nor agreed to. In any case, without waiving our objection to this change, the subpoenas are attached.

Your reference to jurisdiction, by vaguely and nonsensically asking for citations, is clearly a pretext to limit Plaintiff's defenses which will be severely damaging to the District and Board (your clients). The fact of the matter is that the District is trying to force Mr. Moorehead to return to a hostile and unsafe environment, and that is valid defense to the witch hunt against him. How that hostile environment arose and was created is squarely at issue. Your blatant attempt to try to limit this highly relevant evidence is absurd and indicative of the fact that you need to recuse yourself and the Board.

Lastly, your repeated and continuing references to "election" of remedies and arbitration are again objected to. Jason has not elected or chosen any of this. The Board has unilaterally forged ahead and is now trying to fire him for an illegitimate reason. The simple fact of the matter is that it does not matter how we arrived at a board hearing, nor why Mr. Moorehead is not arbitrating this matter. He does not have to explain himself or his legal strategy and it is improper that you ask him to do so. We are in front of a board hearing and the School Code and the Constitution of the United States unambiguously require a "**full, impartial and unbiased consideration.**" Section 1129 of the Code, 24 P.S. § 11-1129.

Your attempt to limit this hearing is illegal. Your attempt to avoid addressing the obvious and undeniable bias of the Board is illegal. This is a pretextual and predetermined proceeding, and each further communication makes it apparent that you are in fact counsel for the Board, that you and your firm are conflicted, and that this process is a sham.

Mr. Moorehead will be proceeding with both his evidence of bias and his case in chief, and expects the full hearing to take place on Monday as agreed on November 12, 2021. He expects his witnesses currently employed by the District to be present, especially as the subpoenas are attached.

AJ Fluehr, Esquire
FRANCIS ALEXANDER, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 341-1063
F: (215) 500-1005
aj@francisalexander.com

From: Sultanik, Jeffrey T. [mailto:JSultanik@foxrothschild.com]

Sent: Thursday, November 18, 2021 7:25 PM

To: AJ Fluehr <aj@francisalexander.com>; Brian J. Taylor Esq. <btaylor@kingspry.com>

Cc: Francis Alexander Malofiy <francis@francisalexander.com>; John E. Freund III Esq. <jef@kingspry.com>; Haaz, Samuel A. <SHAaz@foxrothschild.com>; Conolly, Cathy <CConolly@foxrothschild.com>; Wilson, Sheryl <SWilson@foxrothschild.com>

Subject: Re: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues

1. Receipt of documents acknowledged.
2. Subpoena requests - Consistent with the Prehearing Memoranda, counsel for Mr. Moorehead needs to prepare individual administrative subpoenas for each individual requested, which I may sign if the offer of proof is deemed relevant or may be subject to options or a motion to quash that may be addressed by ASD Administration by noon tomorrow.
3. Streaming or zoom request for hearing — Because the ASD Administration has the burden of proof on the discharge of Mr. Moorehead, Mr. Moorehead will not be required to present its case until after the ASD Administration presents its case, which will likely be addressed at a subsequent hearing date. My intention is to have the ASD Administration complete its case in chief on Monday. A zoom request for COVID susceptible witnesses will be addressed at that time.
4. Citations to TTA, arbitration, or Pennsylvania school code decisions will be required to establish whether or not this hearing officer/board has jurisdiction to address issues beyond the ASD Administration charges of “willful neglect of duties”. Absent your providing me citations to this issue, I will be inclined to limit the testimony to the charge(s) addressed by the ASD Administration.
5. Please provide legal authority for the Statement of Legal Issues and Supplemental Legal Issues by providing written citations to TTA, arbitration, or Pennsylvania school code decisions supporting your contentions.
6. Counsel for Mr. Moorehead needs to submit a written brief with relevant citations of applicable legal authority in response to Employer Allentown School District’s Brief on Election of Remedies and Use of Hearing Officer on or before the commencement of the November 22, hearing.

From: AJ Fluehr <aj@francisalexander.com>

Sent: Thursday, November 18, 2021 5:01 PM

To: Sultanik, Jeffrey T.

Cc: Francis Alexander Malofiy

Subject: [EXT] FW: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues

From: AJ Fluehr

Sent: Thursday, November 18, 2021 4:59 PM

EXHIBIT 38

From: [Sultanik, Jeffrey T.](#)
To: [AJ Fluehr](#); btaylor@kingspry.com; jef@kingspry.com
Cc: [Francis Alexander Malofiy](#); [Haaz, Samuel A.](#); [Wilson, Sheryl](#); [Conolly, Cathy](#)
Subject: Re: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues
Date: Friday, November 19, 2021 12:05:09 AM

Please see my comments below in bold print:

Nearly everything in this email is rejected and objected to. We never discussed or agreed to most of these points. In fact, most of this is contrary to our discussion on November 12, 2021. **I disagree. By the way, were you present during the prehearing conference because I do not recall seeing you (Mr. Fluehr).**

We discussed and agreed on November 12 that Jason Moorehead would initially present evidence of predetermination and bias, and briefing, on Monday. You said you would then make a decision on bias. **We did not agree that you would initially present evidence of bias. We agreed that you would present a brief outlining your legal authority for the bias that you are asserting and that we would recess while I would consider your legal position. I would suggest that you reread the prehearing memorandum following our prehearing conference.**

We also indicated, as we always have, that we would present voluminous evidence that the cited reason by the Board for Mr. Moorehead's termination for "willful neglect of duties" is entirely pretextual and false. **You will have the perfect right to raise relevant issues in your rebuttal to the district administration's case which will be addressed first. I am certain you would agree with me that the district has the burden of proof to establish cause for termination pursuant to section 11-1122 of the school code.**

Now, unilaterally, you are trying to change the agreed upon terms. This is exactly why I asked that our prior Zoom conference of Nov. 12 be recorded for transparency, which you refused to allow. At that time you first denied the Board and its members were your clients, and then later admitted that you were their counsel. We are still waiting for the retainer agreement and engagement letter (which was a corrupted file and could not be opened). **The retainer agreement was appended to the prehearing memorandum following the prehearing conference and this is the first time you have decided to assert that the retainer agreement was a corrupted file. I will see if my substitute assistant tomorrow can send you another copy of the engagement agreement. I made it very clear that Fox Rothschild represents the district in its capacity as solicitor. In the context of this particular hearing I am representing the interests of the board and King Spry is representing the interests of the administration. I would suggest that you stop your non substantive pontificating and provide legal citations for your position. The administration has briefed the issue of bias already; you have not.**

You write that ASD will present its case first, and then Mr. Moorehead will "likely" only be permitted

to respond at another undetermined time. This is absolutely rejected. **First**, the bias of the board and the hearing officer need to be addressed first. This will require the testimony of witnesses. You are attempting to avoid addressing this, which is further evidence of bias. **Second**, Jason Moorehead objects to your ridiculous attempt to divide the hearing up to prevent Mr. Moorehead from effectively rebutting the District's case. **I repeat once again that the bias of the board and the hearing officer will be addressed through briefing that you were to submit at the commencement of the hearing. We will hopefully briefly recess after you submit your brief and a decision will be made as to whether or not the hearing will proceed. If the hearing will proceed, there will be evidence initially addressed by the district administration which has the burden of proof.**

Regarding subpoenas, at the conference you stated that some of the listed witnesses were no longer employees and would need to be subpoenaed. Now, your email states that all witnesses need to be subpoenaed. **I never asserted that only the non-employees of the district will need to be subpoenaed.** Are you, as the allegedly impartial hearing officer, telling me that a party to the proceeding will not be producing the identified witnesses? This was absolutely not contemplated, nor agreed to. In any case, without waiving our objection to this change, the subpoenas are attached. **The subpoenas were attached five hours and 52 minutes after the deadline set forth in the prehearing memoranda. I made it very clear on more than one occasion during the prehearing conference that you needed to prepare the form of subpoenas. I am admittedly struggling about your need to have so many witnesses subpoenaed, including the new district superintendent who didn't start his formal employment with ASD until November 15, 2021.**

Your reference to jurisdiction, by vaguely and nonsensically asking for citations, is clearly a pretext to limit Plaintiff's defenses which will be severely damaging to the District and Board (your clients). The fact of the matter is that the District is trying to force Mr. Moorehead to return to a hostile and unsafe environment, and that is valid defense to the witch hunt against him. How that hostile environment arose and was created is squarely at issue. Your blatant attempt to try to limit this highly relevant evidence is absurd and indicative of the fact that you need to recuse yourself and the Board. **We will address this purported hostile environment issue in your rebuttal. I will be looking for legal authority that a purported hostile work environment is a defense to a directive to return to work.**

Lastly, your repeated and continuing references to "election" of remedies and arbitration are again objected to. Jason has not elected or chosen any of this. The Board has unilaterally forged ahead and is now trying to fire him for an illegitimate reason. The simple fact of the matter is that it does not matter how we arrived at a board hearing, nor why Mr. Moorehead is not arbitrating this matter. He does not have to explain himself or his legal strategy and it is improper that you ask him to do so. We are in front of a board hearing and the School Code and the Constitution of the United States unambiguously require a **"full, impartial and unbiased consideration."** Section 1129 of the Code, 24 P.S. § 11-1129. **On my review of the documentation, the board is not trying to fire your client. The district administration has bought charges to terminate your client and the board will ultimately decide that determination consistent with state law and your election of remedies.**

Your attempt to limit this hearing is illegal. Your attempt to avoid addressing the obvious and undeniable bias of the Board is illegal. This is a pretextual and predetermined proceeding, and each further communication makes it apparent that you are in fact counsel for the Board, that you and your firm are conflicted, and that this process is a sham.

Mr. Moorehead will be proceeding with both his evidence of bias and his case in chief, and expects the full hearing to take place on Monday as agreed on November 12, 2021. He expects his witnesses currently employed by the District to be present, especially as the subpoenas are attached. **As stated, I am going to give an opportunity to the district administration to argue with respect to the relevancy of your numerous requests for subpoenas. Further, you do NOT decide whether or not Mr. Moorehead will be proceeding with both his evidence of bias and his case in chief on Monday. As hearing officer I will be making that decision and will determine the manner in which the hearing will be conducted. If you do not like my determinations and the board ultimately sustains them you will have a right of appeal to the Secretary of Education in accordance with the school code. Further, if evidence is allegedly not entered into the record in this proceeding, upon appeal to the Secretary of Education, you can make a request pursuant section 1131 for additional testimony. According to the district administration's disclosures, Mr. Pidgeon will be testifying on behalf of the district administration. Once again, it will NOT be up to you and your client to dictate the order and presentation of testimony. I await your brief on the issue of bias and also await your briefing on the issue of election of remedies. By virtue of your asking for a public hearing on behalf of your client, it is my understanding that that constitutes an election of remedies pursuant to section 11-1133 of the school code.. If you are now claiming that you did not understand the impact of requesting a public hearing and your election under section 1133, you are going to have to attempt to explain that in your brief. That is the threshold issue that we were discussing during the pre-hearing conference that you conveniently forgot.**

From: AJ Fluehr <aj@francisalexander.com>

Sent: Thursday, November 18, 2021 10:52 PM

To: Sultanik, Jeffrey T.; btaylor@kingspry.com; jef@kingspry.com

Cc: Francis Alexander Malofiy

Subject: [EXT] RE: Allentown School District - In Re: The Matter of Jason Moorehead; Hearing Officer's Prehearing Memorandum and Scheduling of a Prehearing Conference; Scheduling Issues

Mr. Sultanik,

Nearly everything in this email is rejected and objected to. We never discussed or agreed to most of these points. In fact, most of this is contrary to our discussion on November 12, 2021.

We discussed and agreed on November 12 that Jason Moorehead would initially present evidence of

EXHIBIT 39

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

**EMPLOYER ALLENTOWN SCHOOL DISTRICT'S
OBJECTION TO ISSUANCE OF SUBPOENAS**

Allentown School District (hereafter “the District”) by and through its Special Counsel, King, Spry, Herman, Freund & Faul, LLC hereby files the herein Objection to the Issuance of Various Subpoenas and states as follows:

I. BACKGROUND

Pursuant to Hearing Officer’s Prehearing Memorandum No. 4, the District objects to the issuance of various subpoenas requested by employee Jason Moorehead in advance of his employment hearing for the following individuals or entities:

- 1) DFS Consulting Designee
- 2) Magnet Forensics Designee
- 3) Fox Rothschild, LLP Designee
- 4) FBI Agent
- 5) State Police Trooper
- 6) Linda Vega
- 7) Charles Thiel
- 8) Audrey Mathison
- 9) Cheryl Johnson-Watts
- 10) Phoebe Harris
- 11) Lisa Conover
- 12) Sara Brace
- 13) Nicholas Miller

14) Nancy Wilt

15) John Stanford

II. LEGAL ARGUMENT

A. THE TESTIMONY REQUESTED AND EXPECTED OF THE PROPOSED WITNESSES IS IRRELEVANT AND THUS INADMISSABLE

The District conducted an investigation into the activities and actions of Mr. Moorehead during the January 6, 2021 insurrection upon the United States Capitol building. The District conducted an extensive investigation and determined that Mr. Moorhead did travel to Washington, D.C. and posted images of himself and statements which appear to be supportive of the insurrection. The investigation ultimately determined that though Mr. Moorehead was in Washington DC in support of former President Trump's rally on the mall, he had not been present at the Capitol.

The District first became aware of the postings later the same evening and posted a statement on its website regarding its concern over the presence of a staff member at the insurrection. Of significant note, this posting by former Superintendent Thomas Parker did not identify Mr. Moorhead. Publication of his presence was the result solely of Mr. Moorhead's online actions and activities. Members of the school community, which is comprised primarily of various majority groups, spoke out in protest regarding Mr. Moorehead's continued employment.

It is expected that Mr. Moorhead and/or his counsel will attempt to offer oral argument and testimony as to the investigation and his allegations as set forth by his counsel at his Loudermill that the public's reaction and outcry at his action has made it impossible for him to return. The issue is not the scope or results of the investigation which concluded with a return to work decision by former Superintendent Marilyn Martinez but rather whether Mr. Moorehead ignored and has continued to ignore a directive of employer.

Evidence is relevant if it has “any tendency to make a fact [of consequence] more or less probable than it would without the evidence.” Pa.R.E. 401. Irrelevant evidence is inadmissible. Pa.R.E. 402. Teichman v. Evangelical Community Hospital, 237 A.2d 1082 (Pa. Super. 2020). Moreover, even relevant evidence may be excluded “if its probative value is outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa.R.E. 403. Unfair prejudice, in particular, is a basis for exclusion and is defined as a tendency to suggest decision on an improper basis or diver the jury’s attention from its duty of weighing the evidence impartially. Smith v. Morrison, 47 A.3d 131 (Pa. Super. 2012); Commonwealth v. Wright, 961 A.2d 119 (Pa. Super. 2008).

Mr. Moorehead was ordered return to work with teaching guidelines and conditions relating to instruction in the classroom. The scope and result of the investigation provide no legal or contractual basis for failing to return to work in August 2021. All other issues including such blatantly unrelated issues such the identification of the FBI agent(s) involved or the fact that the Executive Director wrote directly to Mr. Moorehead as an employee to provide notice of the Loudermill hearing are completely irrelevant to the issues of Mr. Moorehead’s continued refusal to follow a directive.

Moreover, it is believed based upon the content Mr. Moorehead’s counsel’s objection to the Loudermill that Mr. Moorehead intends to raise various irrelevant and ancillary issues in an attempt to improperly inflame and divert the Board of School Directors who will serve as the triers of fact and ultimate decision makers. None of the above proposed witnesses have any knowledge or played any role in the administrative process regarding Mr. Moorehead’s leave or reinstatement to work. As such the District would object to subpoenas issued to the above individuals or entities.

B. THE REQUESTED SUBPOENAS ARE UNTIMELY

The Prehearing Memorandum set 5:00 p.m. on November 18, 2021 as the deadline for the submission of form subpoenas. The same memorandum also noted the tight timeframe that the District would be placed under if it chose to respond and/or object. Despite this clear directive, counsel for Mr. Moorhead served the form subpoena nearly six (6) hours later, effectively the following day. It should be noted that Counsel for Mr. Moorhead wrote the District and the Hearing Officer with a list of objections earlier in the day and as such, could have sent the subpoena request at the same time. Moreover, the subpoena list added individuals and entities that do not appear on the Prehearing Memorandum submitted by Mr. Moorehead's Counsel on November 10, 2021. The effect of the above actions is severely prejudicial to the District and is a blatant attempt to hamper and distract the orderly hearing and pre-hearing process.

C. RESERVATION OF RIGHTS

In the event that the subpoenas are issued and served, the District reserves the right to raise objections to any testimony, statement or other evidence from all the subpoenaed witnesses on the grounds stated in this objection as well as any other applicable legal grounds.

Respectfully submitted,
KING, SPRY, HERMAN, FREUND & FAUL, LLC

By: 

King, Spry, Herman, Freund & Faul
John E. Freund, III, Esquire
Brian J. Taylor, Esquire
One West Broad Street, Suite 700
Bethlehem, Pa. 18018
(610)209-5101
Special Counsel to the Allentown School District

Date: November 19, 2021

EXHIBIT 40

From: [Francis Alexander Malofiy](#)
To: ["Brian Taylor"](#); [Sultanik, Jeffrey T.](#); [John Freund, III](#)
Cc: [Francis Alexander Malofiy](#); [AJ Fluehr](#)
Subject: RE: Allentown School District - In Re: The Matter of Jason Moorehead; Objection to Subpoenas
Date: Friday, November 19, 2021 5:02:19 PM
Attachments: [image001.png](#)
[image003.png](#)

Mr. Sultanik and Mr. Taylor,

The subpoenas are entirely relevant. You are claiming that Mr. Moorehead has to return to work, yet the School District has created and fostered and incredibly unsafe and hostile work environment. It privately admits that the false statements made by the District about him are false, and yet refuses to publicly correct the record. It unambiguously violated the prohibition on public criticism of teachers. It is squarely at issue whether he can return to work, and these witnesses are also material to our claims of bias and impartiality which must be addressed first prior to any hearing occurring.

We must note that at the Nov. 12 Zoom conference, Mr. Malofiy was crystal clear that it would first be necessary to put on witnesses on bias on Monday before the hearing proceeded, through testimony. We agreed, in addition, to provide briefing, but we made clear that fully addressing bias requires testimony and cross examination. Mr. Sultanik acknowledged this. To now claim that we are entitled only to briefing is a unilateral, biased, and unduly prejudicial attempt to subject Mr. Moorehead to a biased and circumscribed hearing. We will be bringing and presenting witnesses as this is what was discussed on November 12 and is the only way to consider the bias—first—before the hearing is conducted.

We had a prehearing to discuss how this will proceed and now you are unilaterally restricting our right to put on our case and breaking the hearing up into discrete subparts to protect your clients.

Furthermore, Mr. Taylor's attempt to insulate the Board and others and claim they did not participate in the discipline against Mr. Moorehead begs the question. They were intimately involved at all steps and their testimony will reveal as much.

The objection on timeliness to the subpoenas are meritless, and the claims of prejudice preposterous. Almost all of these witnesses have been known and disclosed, with proffers, for months. The additional witnesses also concern topics and subject matter that have always been in dispute and are well known to the District and Board. We also note that no "form administrative subpoena" was ever given to us, and thus we had to craft our own.

The fact of the matter is that the School Code requires a "full" and "impartial" hearing. These frivolous objections deny Mr. Moorehead his rights under the School Code and Constitution.

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063

T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: Kristin Reed <Kreed@KingSpry.com> **On Behalf Of** Brian Taylor
Sent: Friday, November 19, 2021 2:41 PM
To: Sultanik, Jeffrey T. <JSultanik@foxrothschild.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; Brian Taylor <btaylor@KingSpry.com>; John Freund, III <jef@KingSpry.com>; AJ Fluehr <aj@francisalexander.com>
Subject: Re: Allentown School District - In Re: The Matter of Jason Moorehead; Objection to Subpoenas

Good afternoon,

Attached, please find correspondence on behalf of the Allentown School District relative to the above. Thank you.

Very truly yours,

Kristin E. Reed

Legal Assistant to Brian J. Taylor, Esq.,
Glenna Hazeltine, Esq. and Elizabeth M. Kelly, Esq.

KING, SPRY, HERMAN, FREUND & FAUL, LLC

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Bethlehem, PA 18018

(p) 610-332-0390 ext. 301

(f) 610-332-0314

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EXHIBIT 41

From: [Sultanik, Jeffrey T.](#)
To: [Francis Alexander Malofiy](#); [AJ Fluehr](#); [Brian J. Taylor Esq.](#); [John E. Freund III Esq.](#)
Cc: [Haaz, Samuel A.](#); [Wilson, Sheryl](#); [Fitzgerald, Mark W.](#)
Subject: ALLENTOWN SCHOOL DISTRICT - In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead; PREHEARING MEMORANDUM #6 Ruling on Objections to Subpoenas
Date: Friday, November 19, 2021 5:55:36 PM

1. Pursuant to Hearing Officer's Prehearing Memorandum No. 4, the District objected to the issuance of various subpoenas requested by employee Jason Moorehead in advance of his employment hearing for the following individuals or entities. This hearing officer hereby quashes the following subpoenas as they are not relevant to the charges brought by the ASD Administration and for the additional reasons set forth in this document:

- 1) DFS Consulting Designee - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 2) Magnet Forensics Designee - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 3) Fox Rothschild, LLP Designee - Not engaged as District solicitor until 7/1/21 and was not involved in handling the disciplinary issues involving Jason Moorehead, which was exclusively handled by King Spry firm pre and post the engagement of Fox Rothschild LLP. Information is further not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties. Further, the subpoena itself seeks information that is attorney-client privileged.
- 4) FBI Agent - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 5) State Police Trooper - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 6) Linda Vega - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 7) Charles Thiel - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 8) Audrey Mathison - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 9) Cheryl Johnson-Watts - No longer an ASD board member
- 10) Phoebe Harris - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 11) Lisa Conover - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 12) Sara Brace - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 13) Nicholas Miller - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 14) Nancy Wilt - Information not relevant to Mr. Moorehead's charge of being willfully neglectful of his duties.
- 15) John Stanford - Not employed by ASD until 11/15/21.

2. Evidence is relevant if it has "any tendency to make a fact [of consequence] more or less probable than it would without the evidence." Irrelevant evidence is inadmissible. *Teichman v. Evangelical Community Hospital*, 237 A.2d 1082 (Pa. Super. 2020). Moreover, even

relevant evidence may be excluded “if its probative value is outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa.R.E. 403. Unfair prejudice, in particular, is a basis for exclusion and is defined as a tendency to suggest decision on an improper basis or divert the jury’s attention from its duty of weighing the evidence impartially. *Smith v. Morrison*, 47 A.3d 131 (Pa. Super. 2012); *Commonwealth v. Wright*, 961 A.2d 119 (Pa. Super. 2008).

3. Mr. Moorehead was ordered return to work with teaching guidelines and conditions relating to instruction in the classroom. The scope and result of the investigation provide no legal or contractual basis for failing to return to work in August 2021. All other issues including such blatantly unrelated issues such the identification of the FBI agent(s) involved or the fact that the Executive Director wrote directly to Mr. Moorehead as an employee to provide notice of the Loudermill hearing are completely irrelevant to the issues of Mr. Moorehead’s continued refusal to follow a directive. Moreover, it is believed based upon the content Mr. Moorehead’s counsel’s objection to the Loudermill that Mr. Moorehead intends to raise various irrelevant and ancillary issues in an attempt to improperly inflame and divert the Board of School Directors who will serve as the triers of fact and ultimate decision makers. None of the above proposed witnesses have any knowledge or played any role in the administrative process regarding Mr. Moorehead’s leave or reinstatement to work.

4. Simply put, this hearing officer does not have jurisdiction to entertain the plethora of issues being attempted to be raised by counsel for Jason Moorehead. The school district administration has brought charges against Mr. Moorehead for willful neglect of duties and the focus of this hearing on Monday will exclusively relate to those charges and Mr. Moorehead’s defenses to those charges.

5. The Prehearing Memoranda set 5:00 p.m. on November 18, 2021 as the deadline for the submission of form subpoenas. Despite this clear directive, counsel for Mr. Moorhead served the form subpoenas nearly six (6) hours later, effectively the following day. It should be noted that Counsel for Mr. Moorehead wrote the District and the Hearing Officer with a list of objections earlier in the day and as such, could have sent the subpoena requests at the same time. Moreover, the subpoena list added individuals and entities that do not appear on the Prehearing Memorandum submitted by Mr. Moorehead’s Counsel on November 10, 2021.

6. Notwithstanding the foregoing, this hearing officer approved the subpoenas for Jennifer Ramos, Dr. Lucretia Brown, Dr. Marilyn Martinez, Mark Leibold, Thomas Parker, and Anthony Pidgeon, who parenthetically will be at the hearing anyway presenting the case for the ASD Administration. Those subpoenas should be in the possession of counsel for Jason Moorehead.

7. I will see the parties on Monday at 11 AM in the board room of the ASD administration building located at 31 S. Penn St., Allentown, PA 18105.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

EXHIBIT 42



FRANCIS ALEXANDER LLC

NOVEMBER 22, 2021

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Memorandum on Bias, Election of Remedies, and Hostile Work Environment

Briefing on Board and Hearing Officer Bias and Impartiality

Legal Standard

The Constitution and School Code require an impartial arbiter at a final hearing. Section 1129 provides, in more complete pertinent part:

After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and ***after full, impartial and unbiased consideration*** thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed.

Section 1129 of the Code, 24 P.S. § 11-1129 (emphasis added). This is also required by the Constitution, as held by the Supreme Court of the United States:

The court reached its conclusion of unconstitutionality by alternative lines of argument. ***The first rested upon the principle that tribunals must be impartial. The court thought that the impartiality of the carrier's hearing officers was compromised by their "prior involvement and pecuniary interest."*** *Id.*, at 414. "Pecuniary interest" was shown, the District Court said, by the fact that "their incomes as hearing officers are entirely dependent upon the carrier's decisions regarding whether, and how often, to call upon their services."¹ *Id.*, at 415. Respecting "prior involvement," the court acknowledged that hearing officers *personally* had not been previously involved in the cases they decided. But it noted that hearing officers "are appointed by, and serve at the will of, the carrier [that] has not only participated in the prior stages of each case, but has twice denied the claims [that] are the subject of the hearing," and that five out of seven of Blue Shield's past and present hearing officers "are former *or current* Blue Shield employees." *Id.*, at 414. (Emphasis in original.) See also 42 CFR § 405.824 (1980). The District Court thought these links between the carriers and their hearing officers sufficient to create a constitutionally intolerable risk of hearing officer bias against claimants.

Schweiker v. McClure, 456 US 188 (1982) (emphasis added) (cited by McDaniels v. Flick, 59 F. 3d 446 (3d Cir. 1995)).

Furthermore, in Dept. of Education v. Oxford Schools, 24 Pa. Commonwealth Ct. 421, 424-25 (Pa. Commw. 1976), the Commonwealth Court noted that the School Code's requirement of impartial and unbiased consideration can be violated even if inadvertent.

Application

The Board is clearly biased and cannot perform its function as an impartial arbiter as required by the School Code.

First, a lawsuit has been filed against the Board and its members, as well as the District. The Board and its members therefore have a direct pecuniary interest in the outcome of this hearing. This is a direct and clear conflict of interest. The District, under the supervision, ratification, and participation of the Board, has grossly violated Mr. Moorehead's constitutional, contractual, and other legal rights. They are now out of self-interest trying to fire him for a pretextual reason, instead of addressing what was done to him, so that they have some (illusory) iota of cover to claim he was not fired illegally.

Second, the Board has since January 6 been intimately involved in supervising and participating in the Moorehead investigation, suspension, and termination. If this was improper and illegal as Mr. Moorehead claims, then the Board's actions and omissions—including this alleged pretextual termination hearing—are squarely at issue and Board is interested and conflicted.

Third, there is the matter of FBI involvement. It is clear that the Board and District secretly acted as an arm of the FBI and attempted to have Mr. Moorehead incriminate himself. He was never warned of his right against self-incrimination because he had no idea he was actually being interrogated by law enforcement. He was then forced to turn over devices, without any disclosure that it was being done with the intent and purpose that law enforcement search the device for incriminating evidence. This is a serious violation of his Fifth and Fourth Amendment rights. That he was not informed of his rights by the Board is not only a constitutional violation but shows that the Board was trying to find some basis on which to have their political opponent charged with a crime.

Fourth, the Board's actions and omissions during the disciplinary process show that they were motivated by self-interest. Mr. Moorehead was suspended without notice or opportunity to be heard for participating in the Capitol Riot. He was never asked if this was true. Within hours of Parker's statement the District and Board knew the statements about Mr. Moorehead were false. Yet, they pretended for half a year that they were performing an investigation, as they tried to figure out how to fix the problem they had created. One fix would have been to unreservedly apologize to Mr. Moorehead; they took another path. These actions plainly violated the First and Fourteenth Amendments.

The notion that a nearly half-year unnoticed suspension was required because the District and Board did not like a social media joke is absolutely preposterous and smacks of bad faith. Moreover, while trying to devise cover for themselves, they did nothing to correct the toxic and unsafe work environment the District created, which makes it impossible for Mr. Moorhead to return to ASD.

Indeed, at the Feb. 11, 2021 Meeting, the Board fostered and encouraged the community to attack Jason Moorehead using the uncorrected defamatory lies promulgated by the District, knowing that the information was false—even to the point of refusing to heed the advice of counsel.

Fifth, the Board is politically biased against Mr. Moorehead, as the above briefing describes. The Board and District is comprised of overwhelmingly liberal Democrats virulently opposed to Mr. Moorehead's politics. The treatment of Moorehead, the promulgation of false accusations against him,

and then the adamant refusal to correct the record (to this day) while the District and Board tried to devise a “fix” clearly indicate political bias.

Sixth, the hearing is predetermined and pretextual for all the reasons above. In addition, before serving any Loudermill notice, the District terminated Mr. Moorehead’s pay. This termination of pay unambiguously indicates that his termination was already decided.

Seventh, given that the Hearing Officer was retained by the biased District and Board, and the hearing officer admittedly provides advice to the hearing officer and board, the hearing officer is similarly conflicted.

Given this, it is apparent that the Board and Hearing officer are not impartial and are severely conflicted, they cannot adjudicate this matter.

Election of Remedies Briefing

This issue is irrelevant. The School Code says that a professional is entitled to an impartial and full hearing. It does not matter how, or why, the parties arrived at this destination. The notion that not selecting arbitration means that section 1129 of the School Code can be ignored is nonsensical and indicates that the hearing officer is acting in a biased and adversarial manner.

Unsafe and Hostile Environment Making a Return to ASD Impossible

Mr. Moorehead has been unambiguously clear since before April 2021 that due to the District and Board’s actions and omissions he cannot return to ASD. See Exhibit 9. The relationship is irretrievably broken, and an extremely and overtly hostile and unsafe environment has been created. However, understand that he is not going to resign so that the District and Board can try to claim that he left voluntarily. Nothing about what has happened has been voluntary, and Jason has objected at every step of the process.

The District’s public attack and illegal suspension on Mr. Moorehead created a hostile environment that made it impossible for him to return to the School District. See Indiana Univ. of Penn. v. Unempl. Comp. Bd. Of Review, 202 A.3d 195 (Pa. Cmwlth. 2019) (stating that treatment of claimant during investigation that called into question her character and integrity created hostile work environment that made return to work impossible); Porco v. Unempl. Comp. Bd. of Review, 828 A.2d 426, 428 (Pa. Cmwlth. 2003) (“In hostile work environment cases, Pennsylvania courts for half a century have found that . . . unjust accusations represent adequate justification to terminate one’s employment. . . .”); Arufo v. Unempl. Comp. Bd. Of Review, 37 Pa. Commonwealth Ct. 555 (1978) (stating that an unjust “accusation [that is] ... a very real, substantial, and serious personal affront to claimant’s character and integrity” creates an “untenable” employment situation).

Moreover, illegal discrimination against an employee irretrievably breaks an employment relationship. See Taylor v. Unemp. Comp. Bd. of Review, 378 A. 2d 829 (Pa. 1977) (stating that illegal “discrimination is cause of a necessitous and compelling nature”); Brown v. Unemployment Comp. Bd. of Review, 780 A. 2d 885 (Pa. Cmwlth. 2001) (stating “there is no question” that illegal discrimination renders an employment relationship broken).

Where there is no cause for a threatened termination “the choice between resignation and the initiation of termination proceedings [is] ‘*purely coercive.*’” Judge v. Shikellamy School District, 905 F. 3d 122, 123 (3d Cir. 2018); Stone v. Univ. of Maryland Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988) (stating “the mere fact that the choice is between comparably unpleasant alternatives — e.g., resignation or facing disciplinary charges — does not of itself establish that a resignation was induced by duress or coercion, hence was involuntary. This is so even where the only alternative to resignation

is facing possible termination for cause, *unless the employer actually lacked good cause to believe that grounds for termination existed.*” [emphasis added]; Schultz v. U.S. Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987) (“On the other hand, inherent in that proposition is that the agency has reasonable grounds for threatening to take an adverse action. If an employee can show that the agency knew that the reason for the threatened removal could not be substantiated, the threatened action by the agency is purely coercive.”).

Here, there was no basis for the threatened termination. The fact that all the District and Board did after keeping him suspended for nearly half a year was to lamely claim he posted an offensive joke and should return to work, demonstrates that the threatened termination was utterly baseless—and the District and Board knew it.

This was a malicious prosecution, and one where the District and Board have still not corrected the record because of political animus and self-interest.

Again, instead of engaging in this sham trial, the District and Board should engage with Jason to find an amicable resolution. This pretextual firing is only going to make liability for the District and Board worse.

Respectfully,

A handwritten signature in red ink, appearing to be 'F. Malofiy' or similar, written in a cursive style.

Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT 43

Allentown School District
In Re: The Matter of Jason Moorehead

July 16, 2021
Session 1



Min-U-Script® with Word Index

Page 1

Termination Hearing
 (Open Hearing)

RE: Jason Moorehead
 Allentown School District

Stenographic Report of Termination Hearing
 held at
 Allentown School District
 Administration Building
 31 South Penn Street
 Allentown, PA 18105

Monday,
 November 22, 2021
 Commencing at 11:17 a.m.

SESSION 1

- - -

HEARING OFFICERS:
 Jeffrey Sultanik, Esquire
 and Samuel A. Haaz, Esquire
 Fox, Rothschild, LLP
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 shaaz@foxrothschild.com

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BUCKS COUNTY COURT REPORTERS
 Neshaminy Valley Commons
 2410 Bristol Road
 Bensalem, PA 19020
 215-702-2730

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E X H I B I T S

SCHOOL DISTRICT EXHIBITS:

NUMBER:	DESCRIPTION:	M:	A:
A	July 16, 2021 Letter from Anthony Pidgeon to Mr. Moorehead	68	84
B	July 30, 2021 Letter from Francis Malofiy to John Freund	70	84
C	August 9, 2021 Letter from Anthony Pidgeon to Jason Moorehead	72	84
D	August 16, 2021 Email from Jason Moorehead to Anthony Pidgeon	73	84
E	September 13, 2021 Letter from Anthony Pidgeon to Jason Moorehead regarding Notice of a Loudermill Hearing	74	84
F	September 15, 2021 Email from John Freund to Francis Malofiy; and a September 17, 2021 Email from John Freund to Francis Malofiy	75	84
G	September 22, 2021 Loudermill Hearing Transcript, including attachments A through G	76	84
H	Collective Bargaining Agreement	77	84
I	Statement of Charges and Notice of Hearing, dated October 12, 2021	79	84
J	August 9, 2021 letter from Anthony Pidgeon to Jason Moorehead; September 13, 2021 document to Jason Moorehead from Anthony Pidgeon, entitled Notice of Loudermill Hearing; Email from Anthony Pidgeon to Danielle Trevorah; October 7th, 2021 communication from Anthony Pidgeon to Jason Moorehead; and an October 12, 2021 Statement of Charges and Notice of Hearing	152	152

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 Francis Alexander, LLC
 280 N. Providence Road
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 Francis@francisalexander.com
 (For Jason Moorehead)

- - -

ALSO PRESENT:

Jason Moorehead
 Anthony Pidgeon, Executive Director of Human Resources, Allentown SD

INDEX OF WITNESSES

NAME:	DIRECT	CROSS	RD	RC
Anthony Pidgeon	66	85	--	--

E X H I B I T S

MOOREHEAD EXHIBITS:

NUMBER:	DESCRIPTION:	M:	A:
Moorehead 1	November 22, 2021 Memorandum on Bias, Election of Remedies and Hostile Work Environment	36	36
Moorehead 2	Subpoena	98	152
1	January 7, 2021 Letter from Thomas Parker	146	152

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1 PROCEEDINGS

2 HEARING OFFICER SULTANIK: Good morning.

3 My name is Jeffrey T. Sultanik, and with me is Samuel

4 Haaz of the law firm of Fox, Rothschild, LLP. And we

5 are the appointed Board Hearing Officers in conjunction

6 with a matter that has been brought by the School

7 District Administration against Jason Moorehead.

8 The matter involves the charges of the

9 Allentown School District Administration, that

10 Mr. Moorehead has engaged in willful neglect of duties.

11 This Hearing was duly called for a start

12 time of 11:00 o'clock. But it is now 11:17 a.m. And

13 hopefully all parties are ready to proceed.

14 These proceedings are being

15 stenographically recorded, so that we can have written

16 evidence of what individuals state and testify to in

17 this proceeding. And this record will ultimately be

18 reviewed by the Board of School Directors of the

19 Allentown School District, which will eventually rule

20 upon these charges as the hearing body empowered under

21 Section 1122 of the School Code to make these types of

22 decisions.

23 The role of the Hearing Officer is to

24 elicit testimony, make rulings, but ultimately the

25 rulings and the testimony elicited will be reviewed by

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1 the Board of School Directors, which will make the
2 ultimate decision in this proceeding.
3 For the purposes of the record, I would
4 like to note that everyone in the room will need to
5 maintain masks on during this proceeding to comply with
6 the District's rules and requirements, and the Order of
7 Secretary Beam of the Department, the Pennsylvania
8 Department of Health.
9 In the event that masks are not worn, you
10 will be asked to leave the Hearing room.
11 Prior to this proceeding, we have had
12 exchanges between Counsel. And we have shared
13 Prehearing Memoranda, I believe, one through six, to
14 attempt to arrange for the testimony and Hearing today.
15 We will be submitting to the Hearing
16 Officer the Prehearing Memoranda circulated. And I
17 will be making that part of the record in this
18 proceeding. Unless there's objections of either the
19 School District Administration, or Mr. Moorehead's
20 Counsel.
21 **MR. MALOFIY:** Yes, there's an objection.
22 As to the Hearing Officer, without any ability for
23 Mr. Moorehead to cross examine or put witnesses on to
24 discuss the issue of bias. That's a preliminary
25 matter.

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1 But before we go there, I wanted to ask
2 certain questions, one, when would you like the Brief
3 submitted? We do have them here, on bias, number one.
4 Number two, we did present Subpoenas. Some
5 were signed, some were not. We understand that
6 Mr. Pidgeon is here today. I'm not sure what other
7 witnesses will be here. My understanding is that
8 Ms. Ramos will be here; is that correct?
9 **MR. TAYLOR:** That's correct.
10 **MR. MALOFIY:** Is she here currently?
11 **A VOICE:** In the back.
12 **MR. MALOFIY:** Thank you. That being said,
13 and to be clear, those are the only two witnesses you
14 intend to call, correct?
15 **MR. TAYLOR:** Just one, just Mr. Pidgeon.
16 **MR. MALOFIY:** But Ms. Ramos is here?
17 **MR. TAYLOR:** She is here.
18 **MR. MALOFIY:** I'll defer -- well, it's our
19 position that there should be a sequestration of any
20 witnesses who will be testifying. And so we would make
21 that request of the Hearing Officer.
22 With that being said, we would like, we
23 would submit our Briefs on the issue of bias.
24 However, we don't know what the Hearing
25 Officer's decision will be. However, we do feel that

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1 it is important to put a brief statement after, on the
2 record, as to whatever the decision is.
3 **HEARING OFFICER SULTANIK:** Understood.
4 Before we get to that, and I do appreciate what you
5 just said, it will be very helpful to introduce the
6 parties that are here. I only introduced myself and
7 Mr. Haaz.
8 But I'm going to first go to the School
9 District Administration Counsel to introduce themselves
10 in this proceeding, to be noted as a matter of record.
11 And then I'll give them an opportunity to respond to
12 what you just said also.
13 **MR. TAYLOR:** Brian Taylor, on behalf of
14 District Administration.
15 **MR. FREUND:** John Freund, on behalf of the
16 Administration.
17 **HEARING OFFICER SULTANIK:** And both of
18 those individuals are with the law firm of King, Spry,
19 who are representing the Administration in this
20 proceeding.
21 Mr. Malofiy, you have somebody with you
22 also. So could you introduce who is at your table?
23 **MR. MALOFIY:** Yes. Francis Alexander
24 Malofiy, law firm, Francis Alexander. With me today
25 is, my right hand over here, A.J. Fluehr, also an

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1 Attorney. And I proudly represent Mr. Jason Moorehead.
2 Could you please stand up and acknowledge
3 the community here?
4 And I thank everyone here who is in
5 attendance to witness what's going to occur. Thank
6 you.
7 **HEARING OFFICER SULTANIK:** Thank you,
8 Mr. Malofiy and Mr. Fluehr.
9 Also, just in terms of logistics, if
10 somebody needs a comfort break, let us know, in the
11 proceeding. I might be the first one to make that
12 particular request.
13 And that also goes for the Court
14 Stenographer, if she needs some time to do something
15 electronically or just for a break.
16 In addition, we'll discuss as the
17 proceeding moves on the need for, you know, either an
18 abbreviated lunch break or whatever moving forward.
19 As I said earlier, this matter is a
20 proceeding relating to the School District
21 Administration charges that were directed against
22 Mr. Moorehead.
23 In this proceeding, the School District
24 Administration has the burden of proof under Section
25 1122 of the School Code, to bring forth the basis of

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1 the charges.
2 And the Hearing Officer will certainly rule
3 upon any objections that are made in the course of the
4 testimony.
5 As Mr. Malofiy said a little while ago,
6 based upon the Prehearing Memoranda that have been
7 issued and will made part of the record, that
8 Mr. Moorehead has raised the issue of Hearing Officer
9 bias and decision predetermination, both in writing and
10 verbally in previous Hearing discussions.
11 One of the issues before a decision
12 whether or not there will be testimony elicited on this
13 issue is Mr. Moorehead's Counsel submitting a Brief, as
14 to why Mr. Moorehead did not avail himself of his right
15 to elect an arbitration remedy, pursuant to the
16 Collective Bargaining Agreement between the Allentown
17 School District and the Allentown Education Association
18 in accordance with Section 1133 of the Code.
19 One of the issues that has been articulated
20 here is that the Code requires an official election of
21 remedies between your Collective Bargaining Agreement
22 remedy or this Public Hearing remedy.
23 And the record will, I believe note, that
24 Mr. Malofiy on behalf of Mr. Moorehead did officially
25 write a letter, indicating his election to the School

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1 Code remedy of having a Public Hearing in lieu of the
2 Collective Bargaining Agreement rights.
3 And that is one of the issues that we
4 wanted to see briefed on that issue. Because the issue
5 of Hearing Officer bias or Board level bias in this
6 process would be waived if you were to select the
7 Arbitration remedy, where there would be a neutral
8 Arbitrator appointed pursuant to the Bureau of
9 Mediation and the Collective Bargaining Agreement in
10 this process.
11 So that is the nature of the briefing that
12 we wanted to at least initially have. And then we will
13 make a ruling on that.
14 I don't know if the School District
15 Administration Counsel want to comment on that or to --
16 **MR. MALOFIY:** I would need to.
17 **HEARING OFFICER SULTANIK:** You'll get an
18 opportunity.
19 **MR. TAYLOR:** Just briefly, it was my
20 understanding that the issue of election pursuant to
21 1133 was to be briefed, I believe it was last Monday.
22 And Mr. Moorehead didn't brief the issue.
23 The District, the Administration briefed the issue.
24 And we rely upon our written submission.
25 **HEARING OFFICER SULTANIK:** Understood, and

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1 I do have that written submission. I believe,
2 Mr. Malofiy, you also have a copy of that submission.
3 **MR. MALOFIY:** I do. But I think I have to
4 address a number of points. One, you know, one, at
5 every stage of this process, first, his initial
6 suspension, then the investigation, then the
7 inquisition into his personal effects, at every stage
8 the process has been punishment.
9 And at every stage when Mr. Moorehead has
10 come out clean, a Boy Scout and a choir boy, that
11 wasn't enough. So what happened was, there had to be
12 more process, which is the punishment.
13 And now, we all know that at every stage,
14 we did not elect any of these remedies. We did not
15 elect to do any of this process.
16 The process is the punishment. And at
17 every stage we have said, and make it clear, that this
18 is a sham. This process is a sham. This proceeding is
19 a sham.
20 And to have barred Attorneys in a room
21 pretending that this is fair, neutral, and impartial is
22 dripping with insincerity.
23 Now, we didn't elect to proceed this way.
24 This is part of the punishment visited upon my client.
25 And how the School Board continuously abuses his

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1 rights, abuses the Constitution. Abuses the very
2 theory of actions that sit in this room. Of what the
3 Board is supposed to abide to.
4 I haven't addressed bias of Mr. Sultanik.
5 I haven't addressed bias of his Co-Counsel or his firm.
6 And I haven't addressed here orally bias of the Board,
7 who is not here.
8 The Board's going to make decisions about
9 credibility of witnesses, but they're not here to
10 determine the credibility of those witnesses because
11 they're hiding. That's why they're not here.
12 Because if they cared about Mr. Moorehead,
13 if they cared about this community, if they cared
14 about, wait a second, the action items in this room,
15 safety, learning, collaboration with the community,
16 account built, and learning at all levels.
17 But that was just discarded. You know a
18 mirror is a very hard to thing to face when you're
19 looking back at yourself. And it's showing something
20 that is ugly so people hide from it.
21 I have a Brief here on the issue of bias of
22 the Board. I have an issue here, a brief here on bias
23 of the District. I will submit those.
24 Mr. Moorehead was not initially suspended
25 because he failed to appear at work. He was suspended

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1 because that was the choice of the Board, that was the
2 choice of the District.
3 And that process took months and months and
4 months. Without going through that whole process and
5 addressing concerns that I have here today, they said
6 Mr. Moorehead was at the Capitol building and basically
7 breaking in and part of that insurrection. He was not.
8 He was peaceful at all times. But the
9 District blasted him saying he was an insurrectionist,
10 saying he broke in and was part of the Capitol building
11 protest, when he was not, and instead never corrected
12 that record.
13 The District knew from not, from the second
14 day, that he did nothing wrong. And they sat down and
15 they put him through an inquisition on the third day.
16 And as he sits here today, now he's not
17 here because he was at the Capitol building. He's not
18 here because he did anything wrong.
19 In fact, he smells like roses, he's a choir
20 boy and a Boy Scout. He's here because now the
21 District, although they privately said, after a 7-month
22 investigation, with the FBI, that's the part that
23 everyone here is lying about, except for this side.
24 Every Attorney here knows there was an FBI
25 investigation. And everyone is here dripping with

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1 insincerity putting this man at risk, his family at
2 risk, his job at risk.
3 And instead of taking, taking the most
4 basic step of what's ethically right, and stepping up
5 and saying, you know what, there's something called not
6 the liberal states of America, there's something not
7 called the conservative states of America, it's the
8 United States of America.
9 And we know that because we see that flag.
10 And all of us underneath that flag, you, Mr. Sultanik,
11 the Hearing Officer, Mr. Taylor, you, Mr. Freund, and
12 Mr. Pidgeon.
13 But we all forget all our responsibilities
14 and our duties when we want to assassinate our
15 political opponents. When we all stand underneath the
16 United States of America, we stand under the
17 Constitution.
18 And the election we made is that the School
19 Board and the Administration follow the Constitution.
20 And you know what makes this country great and
21 different than any other country in the world? It's
22 the First Amendment.
23 The First Amendment allows you to disagree
24 with your Government. Allows you to petition against
25 your Government. Allows you to respect and also engage

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1 in whatever religion you may choose.
2 It allows the press to report on things.
3 And I'm glad we have a Court Reporter here for the
4 purpose of transparency.
5 And those, no matter what election, no
6 matter what process, that has to be paramount, First
7 Amendment. You know what also we have here? There's a
8 Fourth Amendment Right against search and seizure by
9 your Government. There's also a Fifth Amendment
10 against self incrimination.
11 There's also a Fifth Amendment as to a
12 right to Counsel.
13 There's also the Fourteenth Amendment,
14 which relates to due process.
15 Now, everyone here sits dripping with
16 insincerity. Everyone here sits as if this is a fair,
17 neutral, and impartial Hearing. Everyone sits here
18 acting as if I didn't tell the firm Fox, Rothschild,
19 Mr. Sultanik, that there is a serious issue of a
20 year-long investigation, or we actually don't know.
21 Because no one here chooses to disclose the FBI
22 investigation.
23 So what we've asked for is the Hearing
24 Officer, Mr. Pidgeon -- excuse me, let me correct
25 myself. The Human Resources Director, Mr. Pidgeon, as

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1 part of the Administration to produce the documents and
2 things related to the FBI investigations.
3 And I was told we're not going to receive
4 those, correct? Is that correct?
5 **MR. TAYLOR:** That's correct.
6 **MR. MALOFIY:** That's correct?
7 **MR. TAYLOR:** There are none.
8 **MR. MALOFIY:** Oh.
9 And we asked for the file of Mr. Moorehead.
10 His HR file, do we have that here today, any documents,
11 at all?
12 **MR. TAYLOR:** You've been given all the
13 files relative to his employment. And his return to
14 work and his failure to return to work. You've been
15 given all the documents that are relevant to that.
16 **MR. MALOFIY:** Let me ask more specifically.
17 There was a Subpoena, there were documents and things
18 requested in the Subpoena. Did you review them, and
19 are those things here today, yes or no?
20 **MR. TAYLOR:** Yes, you have them.
21 **MR. MALOFIY:** So the investigation file is
22 here?
23 **MR. TAYLOR:** I'm not going to continue to
24 argue with you. I forwarded all the relevant documents
25 to you.

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1 **MR. MALOFIY:** You're deciding what's
2 relevant now?
3 **MR. TAYLOR:** Well, the Hearing Officer will
4 decide. You don't decide either.
5 **MR. MALOFIY:** You don't have any documents
6 here to give me, correct?
7 **MR. TAYLOR:** Yes, you have the documents.
8 **MR. MALOFIY:** Are you producing --
9 **THE REPORTER:** Wait, wait, wait. Let me
10 stop you right there. You're both speaking at the same
11 time. You want a clear record, you have to do it one
12 at a time.
13 **MR. MALOFIY:** You're right.
14 **MR. TAYLOR:** I apologize.
15 **MR. MALOFIY:** Sir, did you object to the
16 document Subpoena?
17 **MR. TAYLOR:** Sir, you have all the relevant
18 documents.
19 **MR. MALOFIY:** That's not my question. Did
20 you object to my Subpoena?
21 **MR. TAYLOR:** You asked for documents --
22 **HEARING OFFICER SULTANIK:** We're going to
23 address, if I may, if I may, we're going to address
24 document exchange separately from this.
25 **MR. MALOFIY:** Fair enough. Let me wrap it

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1 up.
2 **HEARING OFFICER SULTANIK:** Let's finish the
3 issue on the Hearing Officer bias and the election of
4 remedy issue.
5 And I'm going to ask a preliminary
6 question, because do you acknowledge the fact that the
7 School Code provides for an election of remedies under
8 Section 1133?
9 **MR. MALOFIY:** No. I acknowledge the fact
10 the Constitution must be followed by the Board, by the
11 Administration, and the Hearing Officer. And he's
12 entitled to a fair and impartial Hearing.
13 **HEARING OFFICER SULTANIK:** I understand.
14 But do you understand that under Section 1122 of the
15 School Code, that when charges are brought by a School
16 District Administration, that the employee has the
17 right to choose between a remedy under the Collective
18 Bargaining Agreement and a remedy for a Public Hearing?
19 And are you saying that he didn't make that choice?
20 **MR. MALOFIY:** No, I'm saying 1129, we have
21 it, fair and impartial Hearing.
22 **HEARING OFFICER SULTANIK:** I understand.
23 **MR. MALOFIY:** That's the first step, it's
24 not an election.
25 **HEARING OFFICER SULTANIK:** That's if you

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1 elect the remedy before the School Board. Did you make
2 a choice affirmatively to choose between a Collective
3 Bargaining remedy versus a Public Hearing remedy?
4 **MR. MALOFIY:** As you're aware,
5 Mr. Sultanik, there's an FBI investigation that was
6 never disclosed to our side. As you know, Mark
7 Leibold, the Union --
8 **HEARING OFFICER SULTANIK:** I don't, first
9 of all, I don't know any -- Please don't presume what I
10 know.
11 **MR. MALOFIY:** I told you last week. Did
12 you look into it, and did you ask your client?
13 **HEARING OFFICER SULTANIK:** No, that is not
14 my role as a Hearing Officer to look into the FBI
15 investigation and the like.
16 **MR. MALOFIY:** Of course.
17 **HEARING OFFICER SULTANIK:** That's what is
18 elicited in this Hearing.
19 **MR. MALOFIY:** Well, I think that when we
20 have a man who has Fifth Amendment Rights and when we
21 have Attorneys who are barred, and they don't recognize
22 the importance of the Fifth Amendment, I think
23 it's a serious issue.
24 **HEARING OFFICER SULTANIK:** Can you answer
25 my question?

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1 **MR. MALOFIY:** Yeah, I answered your
2 question.
3 **HEARING OFFICER SULTANIK:** No, no, you
4 didn't.
5 **MR. MALOFIY:** You don't like the answer,
6 but I answered it.
7 **HEARING OFFICER SULTANIK:** I'm not saying,
8 I don't think I got an answer.
9 Did your client make a conscious decision
10 to choose between the Collective Bargaining Agreement
11 remedy under the School Code versus this Public
12 Hearing, which you wrote and requested on behalf of
13 Mr. Moorehead?
14 **MR. MALOFIY:** You are littering the record
15 with false information, with false statements. You
16 haven't been here the whole time --
17 **HEARING OFFICER SULTANIK:** No, I asked the
18 question.
19 **MR. MALOFIY:** Right, right. You know the
20 process has been a sham. And every step of the way we
21 objected to it.
22 **HEARING OFFICER SULTANIK:** You've said
23 that.
24 **MR. MALOFIY:** Hold on, let me finish.
25 **HEARING OFFICER SULTANIK:** No, No, you've

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1 said that five times.
2 **MR. MALOFIY:** You want to cut me off, fine.
3 **HEARING OFFICER SULTANIK:** Can you give me
4 evidence of the election of remedies? That's all I'm
5 asking. It's not a complicated question. He can say I
6 didn't want to go through the Collective Bargaining
7 Agreement. I made a conscious choice on that. I need
8 to hear that.
9 **MR. MALOFIY:** I'm sure, I'm sure you would
10 like to know the Attorney-client privilege and the work
11 product as to why we're here and why we chose
12 one remedy over another. We didn't choose anything.
13 **HEARING OFFICER SULTANIK:** You just told me
14 you chose one remedy over the other.
15 **MR. MALOFIY:** This process was chosen by
16 the District and by the Administration you represent.
17 **HEARING OFFICER SULTANIK:** I got to tell
18 you, I'm looking at the record, and unless I'm missing
19 something, I do not see any request from the District
20 Administration that you can point to where they elected
21 a Public Hearing remedy.
22 **MR. MALOFIY:** They elected the process,
23 they engaged in this process. And they're the
24 ones who are mandating this process. It doesn't matter
25 which process we proceed under, it has to be fair and

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1 impartial either way. And that's the issue.
2 Now, to address a couple other issues on
3 bias. Mr. Sultanik, who do you represent?
4 **HEARING OFFICER SULTANIK:** In this
5 proceeding, I represent the Board of School Directors
6 in being the Counsel for them as Hearing Officer.
7 **MR. MALOFIY:** But don't, isn't your firm
8 also the Solicitor for the whole District, including
9 the Board and the Administration?
10 **HEARING OFFICER SULTANIK:** My firm is the
11 Solicitor for the District. And we shared with you the
12 engagement letter --
13 **MR. MALOFIY:** I just want to be clear. You
14 represent the District, meaning you represent the Board
15 and the Administration, correct?
16 **HEARING OFFICER SULTANIK:** I --
17 **MR. MALOFIY:** For the purpose of this
18 Hearing --
19 **THE REPORTER:** Wait, wait, wait.
20 **HEARING OFFICER SULTANIK:** I represent the
21 District. In this particular proceeding, my firm was
22 not at all involved in the investigation of
23 Mr. Moorehead, as you know. They were represented by
24 King, Spry throughout the entire process.
25 And that is why I don't know about the FBI

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1 investigation. That is why I do not know about the
2 details of the investigation.
3 And the Administration is separately
4 represented by King, Spry in this process.
5 And I am representing the Board, who is the
6 statutory hearing entity that is designed to rule upon
7 charges brought under Section 1122 of the School Code.
8 **MR. MALOFIY:** Let me --
9 **HEARING OFFICER SULTANIK:** So and I presume
10 you have this issue addressed in your Brief.
11 **MR. MALOFIY:** Right. No, no, this issue
12 requires questioning of you as the Hearing Officer.
13 They could have chose 320 million people to
14 be the Hearing Officer here today, correct, in the
15 United States?
16 **HEARING OFFICER SULTANIK:** Not really.
17 **MR. MALOFIY:** No? But they chose you, the
18 person who is the Solicitor for the Allentown School
19 District, correct?
20 **HEARING OFFICER SULTANIK:** The answer is,
21 yes, they did. And the Board has made a choice under
22 the circumstances to do that.
23 However, the ultimate fact finder in this
24 matter is not myself, it's the Board. And you've also
25 said that the Board is biased in this process, too.

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1 And if the Board is biased in this
2 process, how is this School District going to, based
3 upon your argument, render a decision under Section
4 1122 of the School Code?
5 **MR. MALOFIY:** That's a separate issue to be
6 discussed. And it's only if they're the only ones who
7 can render that decision, and they aren't.
8 And there's provisions in the Law that
9 allow for if a Board is infected, if a Board is biased,
10 to have others stand in their shoes to make that
11 decision. And that can be determined and agreed.
12 What we know is that the bias of the Board
13 is very clear. First, a lawsuit has been filed against
14 the Board and the Administration. But they want to sit
15 in judgment.
16 How can you Judge an individual who's done
17 nothing wrong, but sit in judgment when you're fully
18 biased? When you have a lawsuit against you for
19 violating his Constitutional Rights, contractual
20 rights, and Pennsylvania rights. They want to separate
21 that bias.
22 Mr. Sultanik wants to separate that bias
23 for purposes of today he's not, he's not a, he's not
24 biased when he actually represents the District.
25 **HEARING OFFICER SULTANIK:** I am not

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1 involved in the representation on that Writ of Summons.
2 **MR. MALOFIY:** That's correct, you're not.
3 **HEARING OFFICER SULTANIK:** No.
4 **MR. MALOFIY:** Now, second, since January
5 6th the Board has been intimately involved in
6 participating in Mr. Moorehead's investigation, which
7 included an FBI investigation. Never disclosed to him.
8 And never revealed to him.
9 And when it was made aware, and when it was
10 raised at the Hearing Officer, what did the Hearing
11 Officer do? Nothing.
12 When we asked for Subpoenas of the FBI and
13 law enforcement, what did the Hearing Officer do and
14 Fox, Rothschild? Nothing, denied them.
15 So when we want transparency in the
16 process, why aren't the people that were involved in
17 the investigation of Mr. Moorehead, why aren't they
18 here? Is anyone here FBI, by the way? I doubt you'd
19 raise your hand anyway. Anyone here FBI?
20 (No response.)
21 **MR. MALOFIY:** When we have an investigation
22 that is being conducted over multiple months and
23 concealed and made aware of the firm Fox, Rothschild
24 and these two Attorneys here, who claim they are not
25 biased and when they denied the Subpoenas to the FBI,

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1 why would that be?
2 Now, let me move forward.
3 The Board's actions or omissions during the
4 disciplinary process show that there's bias. All
5 right. They knew he was never anywhere near the
6 Capitol building. He was a mile away at all times.
7 They knew about that.
8 That was determined in a Report. But the
9 Board and the District want that to be private. They
10 don't want to let the community know that this man did
11 nothing wrong.
12 So when we look at the theories of action
13 of safety and account built up there, that doesn't
14 apply to Mr. Moorehead. No.
15 **HEARING OFFICER SULTANIK:** Mr. Malofiy, I
16 have a question and maybe my understanding is
17 incorrect.
18 Am I correct that following this
19 investigation, that was apparently performed by the
20 Administration, which you said was seven months in
21 duration, didn't the Administration reinstate
22 Mr. Moorehead to his former position?
23 **MR. MALOFIY:** No. They required him, after
24 they said he did nothing wrong, and privately did a
25 full investigation that he did nothing wrong, then they

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1 said that, well we're going to make you, require you to
2 take all these types of classes, because they felt that
3 he was a racist, okay.
4 There was nothing to indicate this man is a
5 racist. Just because of differing political view. He
6 was never reinstated.
7 So we're here on shifting goal posts as if
8 he didn't come to work.
9 **HEARING OFFICER SULTANIK:** Was he offered
10 reinstatement?
11 **MR. MALOFIY:** No, he was offered a laundry
12 list of things he had to do in order to come back to
13 school. Which we made it clear he will not do and
14 refuses to do.
15 Because when this man did nothing wrong,
16 he's not going to bow down and admit that he did
17 something wrong when he didn't.
18 And the conditions on his return to school
19 were intolerable, were objected to. And we made it
20 clear, with those conditions, this man cannot return.
21 And the big thing was two things. And it's
22 up there on the chart. Safety --
23 **MR. TAYLOR:** You just said he's not going
24 to return to work. That's what we're here for.
25 **MR. MALOFIY:** Safety and account built.

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1 I'll put my record down. Safety and accountability.
2 He has death threats to his house, he has
3 State Police involvement. His windows are closed. He
4 has surveillance cameras. He continues to receive
5 them.
6 I know you're looking at your letter,
7 Mr. Pidgeon, I can appreciate that. That's what it
8 does say. The requirements for him to return. You see
9 that, you're nodding.
10 However, I asked the District for months
11 now, this man wants to go back to work. He left his
12 home in Seattle, left his mother who just passed. He
13 came to a new area, in a diverse community, and he said
14 I want to make a difference.
15 I want to engage with students. I want to
16 actually be someone who is there for them. And I want
17 to be in a hard environment where I can actually make a
18 difference. And he cared about his students. 17 years
19 with no issues whatsoever.
20 But when we asked this Board, when we asked
21 the District to do one thing, correct the record.
22 Accountability. Why? Because it's safety for his wife
23 who is sitting there and his family. And they refuse
24 to do so.
25 So privately, he did nothing wrong, choir

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1 boy. Privately, Boy Scout. Admittedly so. But
2 publicly, they don't care about the safety of
3 Mr. Moorehead or the accountability of setting the
4 record straight.
5 It doesn't cost anything to send an email,
6 which we asked for. This man, his life has been
7 destroyed. Do the most basic decent thing and follow
8 the theory of action that sits in this room, safety and
9 account built.
10 Let the community know he's not a hate
11 monger, he's not a racist, he's not a bigot, he's not a
12 wolf preying upon the children as has been described in
13 Board Hearings. He's not a white supremacist. He's
14 not a terrorist.
15 17 years impeccable performance. He did
16 nothing wrong. Never a complaint. In a predominantly
17 black and brown community. And I applaud this man for
18 that.
19 But now everyone wants to attack him for
20 actually caring and simply saying make my family safe,
21 make my school environment safe. Let the community
22 know I'm not the person you painted me to be.
23 **HEARING OFFICER SULTANIK:** Mr. Malofiy, did
24 I understand you to say that it is your client's
25 intention that he will not be returning to work as long

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1 as these conditions are out there?
2 **MR. MALOFIY:** I made it clear that
3 he will not return to a hostile work environment. He
4 cannot return, you know, it takes us back, it's 1984
5 almost, Orwellian nightmare, you know. In the Nazi
6 camps, they had signs that said work will set you free.
7 They want him to go to an environment where
8 they know that the Board and the Administration is
9 secretly acting as an arm for the FBI and investigate
10 this man and his devices. That's the issue.
11 **HEARING OFFICER SULTANIK:** Mr. Malofiy, are
12 you alleging that the conditions here are analogous to
13 the concentration camp?
14 **MR. MALOFIY:** I am analogizing with a
15 government's involved in lying and involved in all
16 forms in lying to an individual and lying to a man and
17 lying to his family.
18 **HEARING OFFICER SULTANIK:** Why did you use
19 the concentration camp as an example?
20 **MR. MALOFIY:** Because it's the Government
21 lying to the community.
22 **HEARING OFFICER SULTANIK:** I got to tell
23 you, that's personally offensive to me. And I'll
24 explain to you why that is.
25 Both of my parents are Holocaust survivors

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1 and to analogize this situation to a Holocaust
2 situation is personally offensive to me. And I need an
3 apology for that --
4 **MR. MALOFIY:** I'm not here for your
5 personal feelings, sir. My personal feelings is this
6 man was interrogated with the FBI, with the Board, and
7 the Administration, and no one told him that. And you
8 didn't tell him that either.
9 And it's the Government acting in concert
10 with other Government agencies to disclose and hide
11 this man's rights, and also he may have gone to jail
12 wrongfully, and you never told him to get his Fifth
13 Amendment Rights to get counsel. That's the issue
14 here.
15 I can understand that you may have soft
16 feelings and you have feelings, that's not why I'm here
17 today. It's for his Fifth Amendment Rights, his Fourth
18 Amendment Rights, his First Amendment Rights, and his
19 14th.
20 **HEARING OFFICER SULTANIK:** I understand all
21 of your issues with respect to the investigation and
22 the like. However, we are here because of charges on
23 the part of the Administration to terminate
24 Mr. Moorehead as the result of not showing up to work.
25 You will have an opportunity to have

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1 testimony in rebuttal to the Administration's case to
2 raise the reasons why he hasn't shown up to work. That
3 will be perfectly your right to put forth evidence
4 that's relevant to that particular issue.
5 However, right now, the issue is, as we
6 stated, and why we're having this limited argument,
7 what I thought was going to be a limited argument, for
8 you to choose between two remedies.
9 And I haven't heard much on that issue.
10 **MR. MALOFIY:** Let me just clarify. Both my
11 grandfathers were killed by the Nazis. One hanged by a
12 steel hook in his head. All right? Both my
13 grandfathers. And my family was raised by our
14 matriarchs, my grandmothers, and they were in camps.
15 So when you tell me about your
16 sensitivities as you sit here today, my mother is here.
17 My father is sick and can't be here. And both of them
18 came here on a boat to the United States to respect the
19 United States Constitution, the First Amendment, the
20 Fourth Amendment, the Fifth, the Sixth, and the 14th.
21 So I'm sorry about your little feelings, but I'm here
22 defending his Constitutional Rights.
23 **HEARING OFFICER SULTANIK:** You can defend
24 his Constitutional Rights, but we're not here today to
25 talk about that.

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1 **MR. MALOFIY:** You wanted to talk about your
2 personal feelings, so let me tell about mine. We can
3 save that for another day.
4 **HEARING OFFICER SULTANIK:** If those were
5 your personal feelings, you used a very bad analogy, I
6 will just tell you.
7 **MR. MALOFIY:** I'm not here to ask about
8 your thoughts on my analogy. I'm not. I'm here to
9 talk about the Constitution and that flag that stands
10 right there.
11 **HEARING OFFICER SULTANIK:** I'm glad you
12 are. Please address my question.
13 Are you going to submit your Brief?
14 **MR. MALOFIY:** I will. But let's just be
15 clear. This man was called a terrorist, a white
16 supremacist, a bigot, a hate monger, and you want to
17 complain against analogies.
18 All right. Let me move forward.
19 The issue here is safety and account
20 built. An email was not sent to the community. An
21 email was not sent to the Board. An email was not sent
22 by the Board or the Administration or Mr. Sultanik.
23 An email was not sent anywhere to the
24 parents, Teachers, or community to let them know that
25 he is a choir boy and he is a good man and did nothing

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1 wrong.
2 But that could have been done. And they
3 want to put him back into a harsh and dangerous
4 environment and tell him come back to work. Come back
5 to work in a safe and unfair and a harsh environment,
6 where they know that could place him in jail, put him
7 in jail.
8 Because we don't even know, and no one has
9 ever disclosed the extent of the FBI investigation.
10 But I'm sure Mr. Pidgeon will talk and discuss that
11 when he gets on the stand.
12 I made my issue with bias clear. I don't
13 see how a Hearing Officer, who represents the District,
14 which includes the Administration and the Board, on
15 yesterday, and now be the Hearing Officer today just
16 for the Board, and is impartial, and then tomorrow he
17 gets paid tens of thousands of dollars to be the
18 Hearing Officer for the Board and the District. I
19 think it's dripping of insincerity. That's what I
20 think.
21 **HEARING OFFICER SULTANIK:** Would you please
22 submit your Brief?
23 **MR. MALOFIY:** Lastly, at any point in time
24 no matter what election remedy he's chosen, there's an
25 absolute obligation that's it's fair and impartial.

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1 And that's what's disclosed in our Brief.
2 One question. Does 1129 apply? To these
3 Hearings? Fair and impartial Hearing Officer, that's
4 all I have to ask of you.
5 **HEARING OFFICER SULTANIK:** Section 1129
6 applies to these proceedings.
7 **MR. MALOFIY:** Wonderful.
8 This contains, quote, bias, the
9 application, as well as election of remedies, and
10 hostile work environment. Bias, election of remedies,
11 and hostile work environment, these are our Briefs
12 which we submit. Do we have another one?
13 **HEARING OFFICER SULTANIK:** Do you want to
14 make that part of the record, also?
15 **MR. MALOFIY:** Yes.
16 **HEARING OFFICER SULTANIK:** If you have a
17 copy for the Stenographer we can either mark that. And
18 do you have a copy for the Administration?
19 **MR. MALOFIY:** Yes, I do. Do you need one
20 or two, gentlemen? Let the record reflect I handed
21 Mr. Taylor.
22 **HEARING OFFICER SULTANIK:** I only have one
23 document. Does that contain -- it looks like there's
24 two documents, I'm sorry.
25 **MR. MALOFIY:** You want to mark that as

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1 Exhibit 1?
2 **MR. FLUEHR:** It's 4 pages.
3 **HEARING OFFICER SULTANIK:** Let the record
4 note that the document submitted by the law firm of
5 Francis Alexander, LLC, dated November 22, 2021,
6 entitled Memorandum on Bias, Election of Remedies and
7 Hostile Work Environment will be labeled as Moorehead
8 1.
9 (Whereupon, the following Exhibit was
10 marked for identification as follows:
11 Exhibit Moorehead No. 1, November 22, 2021
12 Memorandum on Bias, Election of Remedies and Hostile
13 Work Environment.)
14 **HEARING OFFICER SULTANIK:** Any objection to
15 its admission as part of the record, not necessarily to
16 establish the truth of the matter asserted?
17 **MR. TAYLOR:** No.
18 **HEARING OFFICER SULTANIK:** Thank you, it's
19 admitted into the record.
20 Does the Administration want to supplement
21 or anything on this issue regarding bias over what it
22 is already briefed?
23 **MR. TAYLOR:** Just a brief response to
24 Mr. Malofiy's statements.
25 (Reporter requested clarification.)

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1 **MR. TAYLOR:** Going to election, I believe
2 Mr. Malofiy's response to Hearing Officer's Memorandum
3 proved, without a doubt, conclusively that he put in
4 writing his request for a Public Hearing. He did elect
5 under Section 1133. He was directed to brief this
6 issue.
7 It's my understanding he's now briefing it
8 now, so I'm looking at it for the first time. Again,
9 the District briefed it, the Administration briefed it
10 a week ago.
11 Also, as part of this opening speech he
12 gave, twice he said his client will not return to work.
13 That is the whole substance and crux of why we're here
14 today. You got it in his Opening Statement, as well.
15 I'd like to briefly address the whole bias
16 issue. Again, I haven't had the benefit of looking at
17 his document, but I will just discuss it briefly.
18 There's a string of cases that support a Hearing, the
19 process that we're going through today, to employ a
20 Hearing Officer, and the Board will review the
21 Transcript.
22 Starting with Fadzen versus School District
23 of Philadelphia, 2019 West Law 1501122. Philadelphia
24 versus Puljer, and I will provide the citations.
25 Sertik versus School District of Pittsburgh.

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1 Kaczmarcik versus Carbondale School District.
2 These cases permit and recognize a Hearing
3 Officer or even individual Board Members can preside
4 over a Hearing, in lieu of a Board or subset of a Board
5 as long as a Transcript of record is later made for
6 review.
7 We discussed and addressed the issue of
8 bias in our previous Brief with Behm versus Wilmington
9 Area School District, 996 A2d 60. Being specifically
10 recognized as a Solicitor, even a Solicitor that has
11 been involved has knowledge and involvement in an
12 underlying matter can still serve as a Hearing Officer
13 as long as he did not initiate the underlying
14 investigation and doesn't serve as the final
15 adjudicator, as here where the Board will ultimately
16 adjudicate the case.
17 In this case there's been no proof that
18 Mr. Sultanik played any role or had knowledge of the
19 investigation or the history of Mr. Moorehead's
20 employment.
21 Moreover, Mr. Sultanik is not the final
22 adjudicator. The Board here is in this case. There's
23 no proof that any Board Member played any role or made
24 any decision with respect to the decision to put
25 Mr. Moorehead on leave.

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1 That they played any role in the
2 investigation itself. That they had played any part or
3 had anything to do with the details and conclusion of
4 the investigation or that they played any role with
5 regard to the decision to order Mr. Moorehead back to
6 work.
7 Moreover, going to the bias of the Board
8 itself, there is case law that specifically recognizes
9 that bias may exist --
10 (Reporter requested clarification.)
11 **MR. TAYLOR:** There's Case Law regarding
12 bias of the Board. And that Case Law recognizes that a
13 Board has an absolute duty and responsibility to
14 fulfill its statutory duty despite declaring bias,
15 where the alternative would be that the Board does not
16 act at all. And that case is Stroudsburg v. Kelly 701
17 A2d 1000.
18 So like I said, I don't have the benefit of
19 reading this. So I'm just responding basically off the
20 cuff as to several issues he pointed out.
21 **HEARING OFFICER SULTANIK:** Thank you,
22 Mr. Taylor.
23 Do you have anything you would like to
24 respond?
25 **MR. MALOFIY:** Yeah, the little speech by

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1 Mr. Taylor had nothing to do with the, that this is all
2 pretext. Him not returning to work is pretext for why
3 there was nothing, why the Board or the Administration
4 is not accountable and why they didn't create a safe
5 environment for him and correct the record.
6 Why do we have accountability and safety up
7 on that wall as theories of action, but we're not
8 following here today? That's the big question.
9 So either we follow those tenets that we
10 put up there or we don't. We look to the flag, we
11 follow the flag of the United States of America and the
12 Constitution or we don't. We don't get to pick and
13 choose and determine that because we don't like
14 someone's political position that we can assassinate
15 our political opponents.
16 Because if you can appreciate the BLM
17 protest that occurred, so, too, can you appreciate a
18 conservative rally. This man was peaceful and law
19 abiding at all times, and no one can say differently.
20 Now, no one is going to address that issue
21 here. Mr. Taylor is not going to address that issue.
22 And I think it's dripping with insincerity for him to
23 claim that no one was involved with his investigation,
24 itself.
25 That's going to be for another day. But

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1 what we do know, what we said, if there's going to be a
2 Hearing, it needs to be public, so there's someone to
3 bear witness. That's what we said. If there's going
4 to be a Hearing, it needs to be public.
5 And no matter which remedy is pursued or
6 which path is chosen, as Mr. Sultanik has admitted, the
7 Law provides a full and impartial and unbiased
8 consideration by Section 1129. And also it's required
9 by the Constitution and the Supreme Court of the United
10 States, which I believe we all have to follow, the
11 first rest of the pond, the principal that tribunals
12 must be impartial.
13 The Court thought that impartiality of the
14 carrier's Hearing Officers was compromised by their
15 prior involvement and pecuniary interest. When there's
16 an active lawsuit against the Board and the
17 Administration, there's a pecuniary interest that the
18 Board wants to protect.
19 You know, the most decent thing when you
20 make a mistake is to say I'm sorry. That's the most
21 decent thing. That's what should happen.
22 A year into it, this hasn't been full and
23 fair disclosure. They want him to return to a hostile
24 and harmful environment, where they're acting as a
25 secret arm for the FBI to investigate him, his

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1 children, his devices and other things.
2 But they don't want to disclose it.
3 Everyone wants to pretend we're not barred Attorneys.
4 Everyone should be stripped of their License here.
5 There's an absolute duty as an Officer of
6 the Court to tell the truth. There's an absolute duty
7 of candor. And there's an absolute duty when we say
8 something, and when we're making a record, that it's
9 accurate.
10 I'm not going to get into all of the,
11 excuse me, other violations that we have here. Excuse
12 me.
13 **HEARING OFFICER SULTANIK:** I have a
14 question. What was your specific letter, what did your
15 specific letter state when you requested this Hearing,
16 a Public Hearing, for Mr. Moorehead?
17 **MR. MALOFIY:** It's in the record, and you
18 have it. We didn't request this Hearing. We are
19 objecting at every stage of the way.
20 **HEARING OFFICER SULTANIK:** But could you go
21 over what it said specifically? We didn't formally
22 admit anything into the record.
23 **MR. MALOFIY:** I know because it's their
24 Case in Chief. I'm making a statement on bias to
25 preserve the record.

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1 **HEARING OFFICER SULTANIK:** I understand.
2 I'm just asking a question. Can you go over that?
3 **MR. MALOFIY:** I'll do that on break and
4 I'll tender it to you for your consideration on bias.
5 **HEARING OFFICER SULTANIK:** Does the
6 Administration have that handy about the request for a
7 Hearing? Because that will go to when we recess, I
8 think the central function of what's been requested
9 here. I'm just trying to work through here.
10 **MR. MALOFIY:** And we made it clear early on
11 that he cannot return, because --
12 **HEARING OFFICER SULTANIK:** That's not what
13 I'm asking.
14 **MR. MALOFIY:** -- because things weren't
15 done according to the Constitution and according to
16 what needs to be followed here in Allentown.
17 We also have Samuel Stretton as an expert,
18 Samuel Stretton, an Attorney, an expert in ethics, who
19 was available by phone to testify, as to the violations
20 and bias exhibited here today.
21 **MR. TAYLOR:** I would object to any expert
22 testimony. We haven't been provided any Expert Report
23 sufficient to prepare for Cross Examination.
24 **MR. MALOFIY:** We can delay the proceedings
25 if you choose so that way we can get the Expert Report

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1 and so you won't be caught surprised. But I trust that
2 you know everything that I'm talking about today.
3 **MR. TAYLOR:** I trust that we could have
4 gotten the Report. If you've already talked with your
5 expert. You chose not to do so.
6 **MR. MALOFIY:** We all know what the Rules
7 are as Attorneys, and we all know we must follow them.
8 There's no surprises here.
9 **MR. TAYLOR:** You are to provide --
10 **HEARING OFFICER SULTANIK:** I'm not ruling
11 on that issue right now. That's premature.
12 I'm asking simply the question, what is the
13 document that triggered your requesting this Hearing?
14 And I'm --
15 **MR. MALOFIY:** We didn't trigger this
16 Hearing. It was the Administration that did. We are
17 here because we're not going to hide from the truth.
18 **HEARING OFFICER SULTANIK:** You requested,
19 you didn't request the Public Hearing?
20 **MR. MALOFIY:** What's that?
21 **HEARING OFFICER SULTANIK:** I recall
22 specifically you writing a letter where you requested a
23 Public Hearing.
24 **MR. MALOFIY:** I requested, if there's going
25 to be a Hearing, it must be public.

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1 **HEARING OFFICER SULTANIK:** What was the
2 exact nature of your request, I'd like to have the
3 exact --
4 **MR. MALOFIY:** My exact nature of the
5 request was follow the Constitution --
6 **HEARING OFFICER SULTANIK:** No, Mr. Malofiy,
7 I'm asking for the letter, the precise words that you
8 requested, because that is critical to the 1133 issue
9 that you are skirting.
10 **MR. MALOFIY:** I'm not skirting. I think
11 everyone here is skirting their Constitutional and
12 ethical obligation and professional responsibility --
13 **HEARING OFFICER SULTANIK:** Mr. Malofiy,
14 please answer the question.
15 **MR. MALOFIY:** Mr. Sultanik, what difference
16 does it make whether we're here under the Collective
17 Bargaining Agreement or if we're here under --
18 **HEARING OFFICER SULTANIK:** A huge
19 difference.
20 **MR. MALOFIY:** You have to be impartial.
21 **HEARING OFFICER SULTANIK:** No, no, under
22 the Collective Bargaining Agreement, there is a
23 grievance procedure that would not involve me as a
24 Hearing Officer, or Fox, Rothschild as a Hearing
25 Officer. You would be before a Labor Arbitrator

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1 appointed by the Bureau of Mediation.
2 And you would have the right, your client
3 would have the right, actually, to representation at
4 no cost to him by the Allentown Education Association
5 under the Collective Bargaining Agreement.
6 **MR. MALOFIY:** The issue is that the
7 Allentown Education Association, which Mr. Mark Leibold
8 was also involved in part of the investigation with the
9 FBI.
10 So they want him, they want Mr. Moorehead
11 to go to the people who were involved in the
12 investigation and handle him some more.
13 No, we're not going to do that. You have
14 to be fair and impartial. We're here for a fair and
15 impartial Hearing. If Fox can't be, they shouldn't be
16 here today.
17 **HEARING OFFICER SULTANIK:** You asked me the
18 question of why is the Collective Bargaining Agreement
19 relevant. You have a full and fair remedy under the
20 Collective Bargaining Agreement with an impartial
21 Arbitrator.
22 **MR. TAYLOR:** He just stated he objected to
23 going into the CBA with Mr. Leibold. That's his
24 selection.
25 **MR. MALOFIY:** Please don't be presumptuous

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1 to put words in my mouth.
2 **HEARING OFFICER SULTANIK:** Let me ask the
3 question this way before we review your Brief.
4 **MR. MALOFIY:** Yes.
5 **HEARING OFFICER SULTANIK:** Now, do you
6 agree with me that Section 1133 of the School Code
7 provides in the case of a termination action of a
8 School District two possible remedies for a bargaining
9 unit member in the District?
10 Remedy number one, an option to go into
11 arbitration under the Collective Bargaining Agreement.
12 And remedy number two, an option for a
13 Public Hearing, or if you requested a Private Hearing,
14 before the School Board, to address the issue.
15 You have two options. Do you agree that
16 that's what the Code called for?
17 **MR. MALOFIY:** No, I don't agree as you
18 characterized it. The Law is what the Law is. And
19 we're here for a fair and impartial Hearing. That's
20 why we're here. Not because we chose to.
21 Because the Administration and the Board at
22 all steps of the way have destroyed this man's path in
23 life and derailed it absolutely and completely. That's
24 why we're here.
25 **MR. TAYLOR:** Mr. Sultanik, clearing he

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1 chose this option. Because at one point, I believe ten
2 days ago, he had asked for public notification in the
3 newspaper. During our telephone conversation, he
4 suggested we send out emails. Clearly he elected a
5 Public Hearing of a school --
6 **MR. MALOFIY:** Yes, as opposed to private.
7 Absolutely. We want transparency. We're here, we're
8 glad we're here today with our witnesses, to bear
9 sight.
10 **MR. TAYLOR:** At no point did you object and
11 say why don't we go under the Collective Bargaining
12 Agreement? At no point did you say that.
13 **MR. MALOFIY:** At no point did you disclose
14 the FBI's involvement as you sit here today, even, sir.
15 **MR. TAYLOR:** That's not relevant --
16 **MR. MALOFIY:** Of course, you don't think
17 it's relevant.
18 **THE REPORTER:** Wait, wait, wait.
19 **MR. MALOFIY:** That's relevant when you have
20 the United States flag right there, and you have the
21 Constitution and you have the Fifth Amendment, which
22 you obviously do not understand.
23 **MR. TAYLOR:** You need to read the School
24 Code, maybe you would understand something.
25 **MR. MALOFIY:** Excuse me one more time?

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1 **MR. TAYLOR:** Read the School Code.
2 **MR. MALOFIY:** Read the School Code. It
3 calls for subordinate --
4 **MR. TAYLOR:** You would understand why we're
5 here.
6 **MR. MALOFIY:** Sir, if you don't understand
7 the Constitution and the Laws afforded under the
8 Constitution, I can't help you and I can't make you
9 understand something you never will.
10 **HEARING OFFICER SULTANIK:** Let's stop this
11 already. First of all, constitutional issues can be
12 resolved through the procedures that are provided under
13 the School Code.
14 And what I am candidly mystified by your
15 argument, Mr. Malofiy, that you are just completely
16 ignoring Section 1133 of the Code.
17 But I will look over your Brief. I'm going
18 to, I'm going to request that we have a half an hour to
19 12:40, yes, to 12:40 p.m. to look over your Brief. And
20 then I will indicate what our ruling is with respect to
21 the issues you've raised.
22 But I have to tell you before I go and look
23 at those issues, I'm still mystified as to your
24 argument regarding Section 1133, other than deflecting
25 the argument to saying that it's subject to

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1 Constitutional Rights. Constitutional Rights can be
2 addressed under an 1133 elected procedure.
3 **MR. MALOFIY:** There's nothing which
4 absolves your requirement that this Hearing must be
5 fair and impartial, no matter which path is chosen.
6 And that's the issue. And it cannot be waived.
7 **HEARING OFFICER SULTANIK:** Okay, but --
8 okay, so let me ask the question before we go in.
9 If there were two options available to you,
10 with representing Mr. Moorehead, and let's assume that
11 those are the only two options that we have. Option
12 number one is to go under the Collective Bargaining
13 Agreement. And option number two is to have a Hearing
14 just as we've convened here to address Mr. Moorehead's
15 grievances.
16 Which of the two options would you elect?
17 **MR. MALOFIY:** I'm not here to discuss
18 hypotheticals. We're here for a full --
19 **HEARING OFFICER SULTANIK:** That's real.
20 **MR. MALOFIY:** -- and impartial Hearing.
21 You can handle it how you see fit. But we know why
22 we're here.
23 And at the election we made it every stage
24 of the way, what should happen and why and it wasn't.
25 And that record is fully clear that from right off the

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1 bat in January, that it needed to be corrected. His
2 name couldn't be dragged through the mud. That he did
3 nothing wrong. And instead of doing the correction,
4 nothing was done.
5 We're here because then in order for him to
6 be back in school, there had a laundry list of things
7 he had to do which is basically admit that he's a
8 racist. And he's not going to do it, because he did
9 nothing wrong.
10 We're not agreeing to any of the unilateral
11 sham proceedings and pretextual reasons why we're here
12 today, because we all know it's false. False. Thank
13 you.
14 **HEARING OFFICER SULTANIK:** Anything else?
15 **MR. TAYLOR:** No.
16 **MR. MALOFIY:** Thank you, Hearing Officer.
17 **HEARING OFFICER SULTANIK:** I will see you
18 here promptly at 12:40.
19 (Whereupon, a recess was taken from
20 12:15 p.m. until 12:42 p.m.)
21 **HEARING OFFICER SULTANIK:** We are ready to
22 proceed. Back on the record, please.
23 **A VOICE:** Sorry.
24 **HEARING OFFICER SULTANIK:** Mr. Haaz and I
25 have had an opportunity to confer about the briefing on

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1 the Board and Hearing Officer bias and impartiality,
2 and the legal standard asserted in Moorehead 1.
3 And I would like to preliminarily clarify
4 that Fox, Rothschild, LLP became effective July 1st,
5 2021 Solicitor for the Allentown School District.
6 As part of the determination and the
7 engagement of Fox, Rothschild, the District
8 Administration made a determination as to which items
9 that were handled by the previous Solicitor, King,
10 Spry, would handle.
11 And it was determined that the King, Spry
12 firm would continue to handle the Jason Moorehead
13 matter in representing the Administration in this
14 matter.
15 So when you ask questions about FBI
16 investigation and other related issues, those issues
17 are not known to this firm. And frankly, if we were to
18 have investigated that issue, it would have been
19 inappropriate for us to investigate that issue in our
20 role as Hearing Officer. That is something that has
21 been retained by the King, Spry firm.
22 That is just a clarification. But getting
23 back to the heart of the issue, and forgive me, I am
24 looking at Prehearing Memorandum Number One, where it
25 was noted that by letter, dated October 12, 2021, a

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1 Statement of Charges and Notice of Hearing was issued
2 by the School District Administration on behalf of the
3 Board of Directors to Jason Moorehead, at his home
4 address, via certified mail return receipt requested
5 and first class mail.
6 The Allentown School District
7 Administration notified Mr. Moorehead that it has,
8 quote, cause for Mr. Moorehead's termination from
9 employment by the ASD for reasons of willful neglect of
10 duties in failing or refusing to report to his teaching
11 assignment on the first day of school for teachers for
12 the 2021-2022 school year, and for, three dots repeated
13 three dots, representation, three dots, through Counsel
14 that he did not intend to return to teaching at the
15 Allentown School District. Period, close quote.
16 Based upon the foregoing, the documentation
17 submitted by the District Administration on behalf of
18 the Board was that a Hearing was scheduled to take
19 place on October 25, 2021.
20 It was then the School Board appointed Fox,
21 Rothschild as Hearing Officer. And on Monday, October
22 18, 2021, at 6:31 p.m., Counsel for Jason Moorehead
23 notified Counsel for the Administration that he would
24 be unavailable for the unilaterally scheduled Hearing
25 date, as the result of being in Houston, Texas.

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1 As part of the continuance request, it was
2 proposed that the Hearing was going to be, should be
3 scheduled for 45 days thereafter.
4 Following discussions and prehearing
5 conferences, this Hearing date was established as
6 November 22nd, 2021, and the continuance was granted by
7 myself as Hearing Officer to this date.
8 By virtue of Prehearing Memorandum Number
9 Two, we requested specifically that Mr. Malofiy and/or
10 Mr. Fluehr, confirm that Mr. Moorehead, in accordance
11 with Section 1133 of the School Code, elected a Board
12 level Hearing versus a Hearing pursuant to the
13 Collective Bargaining Agreement, which would have
14 invoked the arbitration procedure in question.
15 And we have even through today, not gotten
16 any clarity from Mr. Moorehead as to which of the two
17 options provided for under the School Code in an
18 employee termination proceeding under Section 1122,
19 which option would be elected, under the circumstances.
20 It is not up to Mr. Malofiy or Mr. Fluehr
21 to create yet another option under the School Code to
22 create a quasi-constitutionally based Hearing, when the
23 School Code, in Section 1133 explicitly gives an
24 employee the right to select between a labor
25 arbitration process, where there would not be a Hearing

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1 remedy. And the same time, a Board level Hearing.
2 For the first time we heard today some
3 reference from Mr. Malofiy that Mr. Leibold, who is the
4 President of the Allentown Education Association, was
5 somehow implicated in this FBI investigation situation.
6 Whether or not that is the case, it points
7 out that Counsel for Mr. Moorehead was weighing the
8 issue of going through the Collective Bargaining
9 Agreement, and proceeding with that remedy, versus
10 choosing a remedy where a Public Hearing was elected.
11 I have read the Brief, and Mr. Haaz read
12 the Brief that was submitted on behalf of
13 Mr. Moorehead. And I cannot find anything in that
14 Brief showing why the election of remedies briefing is,
15 the election of remedies was articulated on behalf of
16 Mr. Moorehead.
17 In fact, the Brief says the issue is
18 irrelevant. The School Code says that a professional
19 is entitled to an impartial and full Hearing. It does
20 not matter how or why the parties arrived at this
21 destination.
22 Well, the question is I'm not so sure where
23 we are in this destination. Because there needs to be
24 an election of remedies under Section 1133. While I do
25 acknowledge that Section 1129 of the School Code is

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1 provided for a full and impartial Hearing, there is a
2 full and impartial Hearing remedy under the Collective
3 Bargaining Agreement, which was not selected.
4 And it is our position that given the
5 governing standards of the Case Law as to what
6 constitutes a full and impartial Hearing on the part of
7 a School Board, that this process meets the
8 prerequisites for that process.
9 But in this case, Mr. Moorehead has not
10 undertaken what we believe to be an elemental
11 requirement of selecting which route they want to
12 challenge under the School Code, the proposed actions
13 of the District.
14 So on its face, we do not believe that
15 Mr. Moorehead, either individually or through his
16 Counsel, has formally or procedurally appropriately
17 requested a remedy in this matter.
18 And in the absence of doing that, we will
19 proceed with this Hearing. But I will have to take
20 note that the appropriate election of remedies has not
21 taken place.
22 I also want to point out to Mr. Malofiy and
23 Mr. Fluehr, as well as Mr. Moorehead, that in the event
24 we go through this process, there is a right of appeal
25 to this process, that can go to the Secretary of

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1 Education. The Secretary of Education has the
2 authority to elicit additional testimony, under the
3 circumstances.
4 And to the extent that if you believe
5 testimony was excluded inappropriately in this matter,
6 that that can be addressed at the Secretary of
7 Education level, or for that matter, the Court level.
8 In addition, we believe that the School
9 Board, itself, has the requirement under the School
10 Code to render a decision on a termination subject to
11 the rights of appeal of Mr. Moorehead, under the
12 circumstances.
13 So to make a long story short, we believe
14 that Counsel for Mr. Moorehead have not established
15 compliance with Section 1133 of the School Code. And
16 in fact, ignoring it is something which is borderline
17 completely inappropriate in this kind of proceeding.
18 There is an absolute requirement that
19 an employee makes an election of remedies. And in the
20 event and absence of an election of remedies, these
21 remedies are going to be, in effect, chosen for
22 Mr. Moorehead.
23 And Mr. Moorehead's Counsel did indeed
24 request a Public Hearing. And I don't believe that
25 that's being disputed by Counsel for Mr. Moorehead,

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1 itself.
2 **MR. MALOFIY:** That is not being disputed,
3 the request for a Public Hearing. Thank you for being
4 here.
5 **HEARING OFFICER SULTANIK:** Pardon me?
6 **MR. MALOFIY:** That is not being disputed
7 that if there is a Hearing, we want it to be public,
8 and we thank everyone for being here.
9 **HEARING OFFICER SULTANIK:** You've said that
10 before.
11 **MR. MALOFIY:** I just wanted to acknowledge
12 the community.
13 **HEARING OFFICER SULTANIK:** This Hearing is
14 not, in all due respect, the community is invited to
15 this process. This is not a show for the community.
16 This is a determination of your client's appeal rights,
17 ultimately to the Board, and also to the Secretary of
18 Education.
19 **MR. MALOFIY:** That's why I was hoping the
20 Board would be here, but they are absent, all of them.
21 **HEARING OFFICER SULTANIK:** You've said that
22 before.
23 **MR. MALOFIY:** No, no one is here from the
24 Board. Wow.
25 **HEARING OFFICER SULTANIK:** So based upon

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1 the foregoing, I am ruling that this matter will
2 proceed as a Public Hearing. I am dismissing the
3 objections with respect to the Board and Hearing
4 Officer bias and impartiality, because of the lack of
5 addressing the election of remedies issue in the Brief.
6 And ultimately, the Board will make a
7 decision on that issue once the Transcript is elicited
8 and forwarded to the School Board for review.
9 I am also going to rule that the issue,
10 which was also briefed, with respect to unsafe and
11 hostile environment, making a return to ASD impossible.
12 To the extent that that is a cognizable
13 legal theory for nonfollowing of a directive of the
14 Administration, that would be addressed in the case
15 that would be propounded on behalf of Mr. Moorehead in
16 response to the case of the Administration, which will
17 go first.
18 So based upon the foregoing, I am going to
19 be turning over this matter to Mr. Taylor on behalf of
20 the School District Administration to proceed with
21 their case under Section 1122 of the School Code.
22 **MR. MALOFIY:** Just noting our objection and
23 argument and also the briefing that has been made part
24 of the record. I understand your ruling, and we're
25 here to proceed.

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1 **HEARING OFFICER SULTANIK:** Understood, and
2 your objection is noted.
3 **MR. MALOFIY:** Thank you.
4 **HEARING OFFICER SULTANIK:** Mr. Taylor?
5 **MR. TAYLOR:** We're here today for an
6 Employment Hearing of employee Jason Moorehead. This
7 case involves a request for a recommendation to the
8 School Board to terminate Mr. Moorehead, who is
9 employed as a Social Studies Teacher at Raub Middle
10 School.
11 Mr. Moorehead is being charged with
12 engaging in willful neglect of duties pursuant to
13 Section 1122 of the Pennsylvania School Code, which
14 sets forth the grounds for termination of a
15 professional employee.
16 Notice of the grounds for termination were
17 sent to him on October 12th, 2021. Specifically
18 Mr. Moorehead was suspended with pay on January 7th,
19 2021, pending an investigation regarding his
20 out-of-school conduct.
21 On July 26th, 2021, Mr. Moorehead was sent
22 a return to teaching assignment letter, by Anthony
23 Pidgeon, the Executive Director of Human Resources for
24 the District.
25 The return to teaching assignment letter

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1 included four specific directives designed to address
2 Mr. Moorehead's teaching conduct upon returning. All
3 teaching staff were directed to report on August 27,
4 2021, for the commencement of the 2021-2022 school
5 year.
6 To date, as of today's date, November 22nd,
7 2021, or nearly three months later, Mr. Moorehead has
8 not reported for work either at his assigned building
9 or for in-service training. Has not indicated an
10 intention to return to work as directed and instructed.
11 Nor has he offered a reason recognizing the School Code
12 or his Bargaining Agreement that justifies or excuses
13 his failure to return.
14 In determining whether a willful violation
15 has occurred, the Commonwealth Court has noticed and
16 recognized that a violation of the School District's
17 Rules and Orders are sufficient to justify termination
18 of a professional employee.
19 Wharton V Jefferson County Technical
20 School, 630, A2d 481.
21 As such it is the determination of the
22 Administration that Mr. Moorehead has willfully
23 neglected his duties as a Teacher, warranting his
24 termination.
25 We will present evidence in the form of

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1 testimony of Mr. Pidgeon, as well as written documents,
2 that establishes three things. Number one,
3 Mr. Moorehead was ordered to return to work.
4 Number two, he has continued and currently
5 refuses to do so.
6 And number three, he was provided the
7 required due process in the form of a Loudermill
8 Hearing, which he participated in through Counsel.
9 We believe that this evidence will justify
10 the issuance of the requested recommendation.
11 **HEARING OFFICER SULTANIK:** Please proceed
12 with your witnesses.
13 **MR. TAYLOR:** I'd like to call Anthony
14 Pidgeon.
15 (Whereupon, a discussion was held off the
16 record.)
17 **HEARING OFFICER SULTANIK:** Any objection to
18 sequestration?
19 **MR. FREUND:** Yes, there is. I just don't
20 want to sequester. We don't have any other witnesses.
21 **MR. TAYLOR:** Over --
22 **MR. MALOFIY:** Ms. Ramos is in the back,
23 correct?
24 **HEARING OFFICER SULTANIK:** But she's not
25 going to be testifying on behalf of the District.

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1 **MR. MALOFIY:** We may call her, obviously.
2 **MR. TAYLOR:** That's your case, though.
3 **HEARING OFFICER SULTANIK:** Yeah, but that
4 doesn't go to sequestration.
5 **MR. MALOFIY:** Yeah, but it goes to fact
6 witnesses. They should not be in the room during the
7 pendency of a Hearing or of a Trial. It's not an
8 expert. It's a fact witness.
9 She should not be here. It's about, it's
10 Rules of Evidence 101. I have a book here, I can get
11 it, actually.
12 **MR. FREUND:** It's totally up to them to
13 call her. We're not calling her.
14 **HEARING OFFICER SULTANIK:** Because of the
15 representation of the Administration that they're not
16 going to be calling Jennifer Ramos, who it looks like
17 she's very eager to leave here.
18 But at this, at this stage in the
19 proceeding, there's no intention on the part of the
20 Administration to call her as a witness. So I will
21 leave it up to the Administration as to whether or not
22 Ms. Ramos stays here or not.
23 **MR. FREUND:** She stays.
24 **MR. TAYLOR:** She stays.
25 **MR. MALOFIY:** It's not because the other

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1 side doesn't intend to call the witness. Any factual
2 witness other than experts are not supposed to be,
3 during factual testimony, so they can't corroborate
4 someone else's testimony. They need to be firsthand
5 from their mind. Not to regurgitate --
6 **THE CHAIRMAN:** You'll have the opportunity
7 to address that through Cross Examination of Ms. Ramos
8 if you then call her as your own witness.
9 **MR. MALOFIY:** You can't unring the bell
10 from what she heard from Mr. Pidgeon.
11 **HEARING OFFICER SULTANIK:** Objection
12 overruled. Proceed.
13 **MR. MALOFIY:** Hold on. Let me go to the
14 Rules of Evidence here. One second.
15 **HEARING OFFICER SULTANIK:** The Rules of
16 Evidence do not formally apply to this proceeding.
17 **MR. MALOFIY:** Apparently nothing applies to
18 this proceeding, not even the Constitution. I
19 understood that.
20 Sequestration.
21 **HEARING OFFICER SULTANIK:** That applies to
22 a civil Trial that you're reading from.
23 **MR. MALOFIY:** That's actually not true.
24 **HEARING OFFICER SULTANIK:** This is not a
25 civil Trial.

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1 **MR. MALOFIY:** That's absolutely not true,
2 by not calling this a civil Trial.
3 **HEARING OFFICER SULTANIK:** This is not a
4 civil Trial.
5 **MR. TAYLOR:** May I proceed?
6 **HEARING OFFICER SULTANIK:** You may proceed.
7 **MR. MALOFIY:** I want to put my objection on
8 the record.
9 The purpose of sequestration is to prevent
10 witnesses from altering their testimony in light of
11 what they have heard --
12 **THE REPORTER:** I'm sorry, please slow down.
13 **MR. MALOFIY:** I'm sorry, my apologies.
14 The purpose of sequestration is to prevent
15 witnesses from altering their testimony in light of
16 what they have heard from other witnesses or observed
17 from Counsel's Cross Examination or Trial tactics.
18 Girders versus United States 425 US 80, 96 Supreme
19 Court 1330. I can provide that to you at the end.
20 The issue here is that the Pennsylvania
21 Rule of Evidence is 615 is the Pennsylvania Rule of
22 Evidence that we're requesting sequestration. And it
23 absolutely should be precluded that all witnesses be
24 excluded from courtroom while they're actually called
25 to the witness stand, or that they may testify as to

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1 factual matters. Supreme Court.
2 **HEARING OFFICER SULTANIK:** This is not a
3 courtroom. This is an Administrative Hearing, pursuant
4 to Section 1122 of the School Code. Your objection is
5 overruled.
6 **BY MR. TAYLOR:**
7 **Q. Can you state your name, please?**
8 * * * *
9 **ANTHONY M. PIDGEON**
10 **was called as a witness and having been first duly**
11 **sworn by the Court Reporter, was examined and testified**
12 **as follows:**
13 * * * *
14 **DIRECT EXAMINATION**
15 **BY MR. TAYLOR:**
16 **Q. Are you ready?**
17 A. Yes.
18 **Q. Can you state your name, please?**
19 A. Anthony Pidgeon. I'm the Executive
20 Director of Human Resources with the Allentown School
21 District.
22 **Q. How long have you been with the Allentown**
23 **School District?**
24 A. About three and-a-half years.
25 **Q. What are your duties as Executive Director**

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1 **of Human Resources for the District?**
2 A. I have many different duties for the
3 District. As it pertains to this case, I am, I work
4 with the hiring of individuals.
5 (Noise emitted.)
6 **MR. MALOFIY:** Sorry about that.
7 **THE WITNESS:** I also conduct internal
8 investigations. Work on negotiations, and many other
9 things.
10 **BY MR. TAYLOR:**
11 **Q. Now, are you familiar with the District's**
12 **beginning of the school year assignment process of**
13 **Teachers?**
14 A. Yes.
15 **Q. Are you familiar with an employee named**
16 **Jason Moorehead?**
17 A. Yes.
18 **Q. Who is Mr. Moorehead?**
19 A. Mr. Moorehead is a Teacher of the Allentown
20 School District. He works at Raub Middle School. He
21 is a History Teacher.
22 **Q. It's my understanding that he was placed on**
23 **leave in January of 2021, but ordered to return to work**
24 **in July of 2021?**
25 A. Correct.

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1 **Q. Now, you have a stack of documents there in**
2 **front of you, which I'm going to refer to.**
3 **Can you take a look at Exhibit A?**
4 **(Whereupon, the following Exhibit was**
5 **marked for identification as follows:**
6 **Exhibit A, July 16, 2021 Letter from**
7 **Anthony Pidgeon to Mr. Moorehead.)**
8 **MR. MALOFIY:** Just to be clear, Counsel.
9 **MR. TAYLOR:** Sure.
10 **MR. MALOFIY:** These are the documents that
11 you previously submitted to us, correct?
12 **MR. TAYLOR:** Yes. Actually, I'm going to
13 present them in a different order than the email.
14 They're the same documents.
15 **MR. MALOFIY:** Thank you, Counsel.
16 **MR. TAYLOR:** Previously identified.
17 **MR. MALOFIY:** No FBI Reports or
18 investigative matters here, right? I take that as
19 no, thank you.
20 **MR. TAYLOR:** First of all, I explained to
21 you they're the same documents that were previously
22 identified.
23 **MR. MALOFIY:** You said a different order.
24 I just wanted to make sure there's no other.
25 **MR. TAYLOR:** I can represent to you there's

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1 no FBI documents in there. Do you want to take a look?
2 **MR. MALOFIY:** Thank you. I appreciate
3 that.
4 **BY MR. TAYLOR:**
5 **Q. Exhibit A, Mr. Pidgeon, would you take a**
6 **look at Exhibit A?**
7 A. Yes.
8 **Q. What is Exhibit A?**
9 A. Exhibit A is a letter that I had sent to
10 Mr. Moorehead regarding his return to teaching
11 assignment. It's dated July 16th, 2021.
12 **Q. And what would you expect from an employee**
13 **receiving a document such as Exhibit A?**
14 A. Typically, I would expect him to return to
15 work.
16 **Q. Did Mr. Moorehead ever return to work?**
17 A. No, he has not.
18 **Q. Has he ever indicated to you that on such**
19 **and such a date he intended on returning to work?**
20 A. No, he did not.
21 **Q. Have you ever issued similar letters to**
22 **other employees?**
23 A. Yes.
24 **Q. Can you take a look at Exhibit B?**
25 **(Whereupon, the following Exhibit was**

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1 **marked for identification as follows:**
2 **Exhibit B, July 30, 2021 Letter from**
3 **Francis Malofiy to John Freund.)**
4 **BY MR. TAYLOR:**
5 **Q. Can you explain to the Hearing Officer what**
6 **Exhibit B is?**
7 **HEARING OFFICER SULTANIK:** Are you moving
8 for the admission of A?
9 **MR. TAYLOR:** I was going to move all of
10 them at once at the same time.
11 **HEARING OFFICER SULTANIK:** That's fine.
12 **THE WITNESS:** Exhibit B is a letter from
13 Attorney Malofiy regarding Mr. Moorehead's return to
14 work.
15 **BY MR. TAYLOR:**
16 **Q. What's the date of that letter?**
17 A. It's dated July 30th, 2021.
18 **Q. And can you read into the record the first**
19 **sentence of that letter?**
20 A. It says Dear Mr. Frank, as we discussed on
21 the phone, Mr. Moorehead is rejecting the District's
22 proposal.
23 **Q. Can you take a look at that letter, read it**
24 **over, I'll give you a moment.**
25 **HEARING OFFICER SULTANIK:** I just have a

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1 clarification on Exhibit A.
2 **MR. TAYLOR:** Sure.
3 **HEARING OFFICER SULTANIK:** Was Exhibit A a
4 proposal of a resolution or a directive on the part of
5 Mr. Pidgeon?
6 **MR. TAYLOR:** It's a directive.
7 **HEARING OFFICER SULTANIK:** I'm just asking.
8 **MR. MALOFIY:** I would also just add that it
9 also was clearing him of any involvement in the January
10 6th matter.
11 **MR. TAYLOR:** Objection. He's commenting on
12 the case.
13 **MR. MALOFIY:** The Hearing Officer had asked
14 what it was. It's fair for both of us to share if
15 there was a misunderstanding or a misstatement.
16 **MR. TAYLOR:** He didn't ask the results of
17 the investigation whether they were cleared.
18 **MR. MALOFIY:** He asked what the document
19 was.
20 **HEARING OFFICER SULTANIK:** The document
21 will speak for itself when it gets admitted.
22 **BY MR. TAYLOR:**
23 **Q. Mr. Pidgeon, did Mr. Moorehead's Lawyer**
24 **state anywhere in this letter that Mr. Moorehead**
25 **intends on returning to work?**

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1 A. No, he does not.
2 **Q. Can you take a look at Exhibit C.**
3 **(Whereupon, the following Exhibit was**
4 **marked for identification as follows:**
5 **Exhibit C, August 9, 2021 Letter from**
6 **Anthony Pidgeon to Jason Moorehead.)**
7 **BY MR. TAYLOR:**
8 **Q. What is Exhibit C?**
9 A. Exhibit C is a letter from me, dated August
10 9th, to Mr. Moorehead, again asking about his return to
11 a teaching assignment.
12 **Q. Actually, can you read the contents of**
13 **Exhibit C into the record, please?**
14 A. Yes. It says: Dear Mr. Moorehead: I have
15 not heard from you following my letter of July 16th,
16 2021, in which I asked you to get back to me by July
17 30th, 2021. Because of the start of school is only
18 weeks away, we must know whether you will return to
19 teaching for the upcoming year.
20 It is, therefore, essential that we hear
21 from you definitively on whether or not you intend to
22 return to teaching in the Allentown School District no
23 later than the end of business on Friday, August 13th,
24 2021.
25 If you do not intend to return, your salary

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1 and benefits will be dismissed. If I do not hear from
2 you by August 13th, 2021, it will be assumed that you
3 will not, that you do not intend to return. And your
4 salary and your benefits will be discontinued pending a
5 formal termination of your employment.
6 **Q. At this point in early August, is the**
7 **District making staffing decisions and determining**
8 **assignment needs?**
9 A. Yes.
10 **Q. Can you move to Exhibit D?**
11 **(Whereupon, the following Exhibit was**
12 **marked for identification as follows:**
13 **Exhibit D, August 16, 2021 Email from Jason**
14 **Moorehead to Anthony Pidgeon.)**
15 **BY MR. TAYLOR:**
16 **Q. What is Exhibit D?**
17 A. Exhibit D is an email from Mr. Moorehead to
18 myself.
19 **Q. Do you want to take a moment and read over**
20 **Exhibit D?**
21 A. (Witness reviewing.)
22 I'm fairly familiar with it.
23 **Q. Now, in this letter, does Mr. Moorehead**
24 **state anywhere that he intends on returning to work?**
25 A. No, he does not. As a matter of fact,

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1 quite clearly he states that he is not returning to
2 work.
3 **Q. Can you take a look at Exhibit E of your**
4 **packet?**
5 **(Whereupon, the following Exhibit was**
6 **marked for identification as follows:**
7 **Exhibit E, September 13, 2021 Letter from**
8 **Anthony Pidgeon to Jason Moorehead regarding Notice of**
9 **a Loudermill Hearing.)**
10 **BY MR. TAYLOR:**
11 **Q. What is Exhibit E?**
12 A. Exhibit E is a Memo of a Notice of a
13 Loudermill Hearing. The Memo, itself, is dated
14 September 13th. The Loudermill Hearing was supposed to
15 be held on September 17th.
16 **Q. Why were you holding a Loudermill Hearing?**
17 A. To see if, to get Mr. Moorehead's side of
18 what's going on on his refusal to return to teaching.
19 **Q. That leads to my next question. Does**
20 **Exhibit E, does it contain a chronological history of**
21 **the correspondence between you and Mr. Moorehead**
22 **regarding his return to work?**
23 A. Yes, it does.
24 **Q. What was your understanding at this point**
25 **in time, in September, whether he intended to return to**

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1 **work or not?**
2 A. It's my understanding that he did not
3 intend on returning.
4 **Q. Can you turn to Exhibit F of your package?**
5 **(Whereupon, the following Exhibit was**
6 **marked for identification as follows:**
7 **Exhibit F, September 15, 2021 Email from**
8 **John Freund to Francis Malofiy; and a September 17,**
9 **2021 Email from John Freund to Francis Malofiy.)**
10 **BY MR. TAYLOR:**
11 **Q. What does Exhibits F contain?**
12 A. Exhibit F is an email from, actually it
13 looks like it's two emails. The first one is from, the
14 first one I'm reading is from Mr. Freund, to
15 Mr. Malofiy. And that is dated September 15th. And
16 the second looks like it's, again, from Mr. Freund to
17 Mr. Malofiy. And that one is dated September 14th.
18 I don't know if there's any more. No,
19 that's all.
20 **Q. Looking at the second email, of Mr. Freund,**
21 **look at the second paragraph. Does Mr. Freund say his**
22 **understanding as to whether Mr. Moorehead intends on**
23 **returning?**
24 **MR. MALOFIY:** Objection. The document
25 states what it says.

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1 **HEARING OFFICER SULTANIK:** I'm going to --
2 rephrase the question. I'm going to sustain the
3 objection.
4 **BY MR. TAYLOR:**
5 **Q. Mr. Pidgeon, can you read the second**
6 **paragraph there, from Mr. Freund?**
7 A. Since both you and your client have stated
8 that he has no intent to return, we would appreciate
9 the courtesy of advance notice if you do not intend to
10 appear.
11 **Q. It appears these emails were focused on**
12 **arranging a Loudermill Hearing. Did that Loudermill**
13 **Hearing occur?**
14 A. Yes, it did.
15 **Q. Do you recall the date of that Hearing?**
16 A. Not off the top of my head.
17 **Q. Does September 22nd, 2021 sound right to**
18 **you?**
19 A. Yes.
20 **Q. Can you look at Exhibit G of the document?**
21 **(Whereupon, the following Exhibit was**
22 **marked for identification as follows:**
23 **Exhibit G, September 22, 2021 Loudermill**
24 **Hearing Transcript, including attachments A**
25 **through G.)**

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1 **BY MR. TAYLOR:**
2 **Q. What's Exhibit G, please?**
3 A. Looks like a, the Loudermill Hearing
4 Transcript.
5 **Q. Did you participate in that Hearing?**
6 A. Yes, I did.
7 **Q. Did Mr. Moorehead through his Counsel**
8 **participate in that Hearing?**
9 A. Yes, he did.
10 **Q. At that Hearing, did Mr. Moorehead offer**
11 **any justification that satisfied you or other**
12 **Administrators regarding his failure to report?**
13 A. No, he did not.
14 **Q. Can you move back about 30 pages. Because**
15 **there are Exhibits attached to the Loudermill Hearing.**
16 **We're looking for Exhibit H.**
17 **(Whereupon, the following Exhibit was**
18 **marked for identification as follows:**
19 **Exhibit H, Collective Bargaining**
20 **Agreement.)**
21 **BY MR. TAYLOR:**
22 **Q. What is Exhibit H?**
23 A. It looks like a --
24 **MR. MALOFIY:** Would you give me a moment,
25 Counselor, to find where you're referring to?

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1 **MR. TAYLOR:** Sure.
2 It's the Bargaining Agreement.
3 **MR. MALOFIY:** Just give me a second to find
4 it.
5 **HEARING OFFICER SULTANIK:** Yes.
6 **MR. MALOFIY:** Thank you.
7 **MR. TAYLOR:** Are you ready?
8 **MR. MALOFIY:** Yeah, I'm good. Thank you.
9 I appreciate the patience.
10 **BY MR. TAYLOR:**
11 **Q. Are you familiar with the Bargaining**
12 **Agreement?**
13 A. Yes, I am.
14 **Q. Does it provide for relief from a back to**
15 **work order based upon the reasons offered by Mr.**
16 **Moorehead's Counsel at his Loudermill?**
17 A. No, it does not.
18 **MR. MALOFIY:** I object to that, the
19 question and the answer.
20 **HEARING OFFICER SULTANIK:** I'm going to
21 overrule the objection. The document speaks for
22 itself. And we can all read what it says.
23 **MR. MALOFIY:** You mean sustain, right?
24 **HEARING OFFICER SULTANIK:** Pardon me?
25 **MR. MALOFIY:** You mean sustain the

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1 objection?
2 **HEARING OFFICER SULTANIK:** I'm not
3 sustaining the objection. I'm just saying, it's, the
4 document speaks for itself.
5 **MR. MALOFIY:** Fair enough, but he can't
6 give legal testimony.
7 **MR. TAYLOR:** He's familiar with the
8 document.
9 **HEARING OFFICER SULTANIK:** He can give
10 testimony about the practice and the operation under
11 the Collective Bargaining Agreement.
12 **MR. MALOFIY:** I understood your ruling as,
13 maybe I -- we'll continue. I'm okay. Thank you.
14 **BY MR. TAYLOR:**
15 **Q. Mr. Pidgeon, look at Exhibit I in your**
16 **packet.**
17 **(Whereupon, the following Exhibit was**
18 **marked for identification as follows:**
19 **Exhibit I, Statement of Charges and Notice**
20 **of Hearing, dated October 12, 2021.)**
21 **BY MR. TAYLOR:**
22 **Q. Do you have I?**
23 A. Yes.
24 **Q. Okay.**
25 A. Exhibit I is a Statement of Charges and

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1 Notice of Hearing, dated October 12th, 2021.
2 **Q. Is that for the Hearing that's ultimately**
3 **occurring today as we sit here?**
4 A. Yes, it is.
5 **Q. Throughout this history, starting July up**
6 **until the current, has Mr. Moorehead ever given you or**
7 **any other member of Administration any indication that**
8 **he intends on returning to work?**
9 A. He hasn't given me any indication that he
10 intended on returning to work.
11 **Q. Has he ever tendered any requests for**
12 **leave, sick leave, anything of that nature?**
13 A. No.
14 **Q. Have you stopped his pay?**
15 A. After the Loudermill Hearing, we formally
16 stopped his pay, yes.
17 **Q. Now, was there a brief time when it was**
18 **stopped earlier?**
19 A. Yes.
20 **Q. Can you explain that?**
21 A. So since Mr. Moorehead did not have an
22 official assignment in our system, he was not awarded
23 pay from the start of the school year from the new pay
24 until the Loudermill Hearing where it was brought up by
25 his Attorney that he was not being paid.

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1 I wasn't even aware of it at that point.
2 And we reinstated that pay specifically as we said we
3 would, and we should have, and we did.
4 **Q. Was that rectified immediately?**
5 A. Yes.
6 **HEARING OFFICER SULTANIK:** Just so I
7 understand it, so the effective date of the suspension
8 without pay, after the remediation, was what date?
9 **THE WITNESS:** I'd have to look that up. I
10 don't have that off the top of my head.
11 **HEARING OFFICER SULTANIK:** But it followed
12 the Loudermill proceeding?
13 **THE WITNESS:** It did follow the Loudermill
14 proceeding, yes.
15 **HEARING OFFICER SULTANIK:** I'd like to know
16 that date just for the record. I'm sure even Counsel
17 for Mr. Moorehead would also want that of record.
18 **BY MR. TAYLOR:**
19 **Q. Mr. Pidgeon, what if anything has the**
20 **District been forced to do as a result of Mr. Moorehead**
21 **not appearing for work?**
22 A. For this school year, as most everybody is
23 aware, the educational world is in a crisis finding
24 Teachers and Substitutes. So that left an additional
25 vacant position for us to fill. So we've had to

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1 scramble to find folks to cover classes.
2 **Q. Has the District in the past followed a**
3 **practice regarding employees that fail to show without**
4 **justification?**
5 A. Yes, if an employee fails to show, come
6 back to work, we do move to recommend their termination
7 to our Board of Directors.
8 **Q. Is that what you've done here?**
9 A. Yes.
10 **Q. Lastly, has this matter, Mr. Moorehead's**
11 **employment, come before the Board, for any type of**
12 **decision?**
13 A. Not at this point --
14 **MR. MALOFIY:** I'm sorry, I didn't hear what
15 you said?
16 **MR. TAYLOR:** Sure.
17 Has the decision regarding Mr. Moorehead's
18 employment come before the Board?
19 **MR. MALOFIY:** Okay.
20 **THE WITNESS:** Not that I'm aware of.
21 **HEARING OFFICER SULTANIK:** I just want to
22 clarify what that means. Did the Board vote on the
23 Statement of Charges?
24 **THE WITNESS:** Not that I'm aware of.
25 **HEARING OFFICER SULTANIK:** Okay.

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1 **BY MR. TAYLOR:**
2 **Q. So Mr. Pidgeon, define what is the**
3 **Administration's view of whether Mr. Moorehead intends**
4 **on returning to work?**
5 A. Mr. Moorehead has stated specifically to
6 me, and his Attorney has also stated specifically to
7 Mr. Freund, that he will not be returning to work.
8 **MR. MALOFIY:** Objection.
9 **MR. TAYLOR:** As to?
10 **HEARING OFFICER SULTANIK:** Your objection
11 is?
12 **MR. MALOFIY:** As to what I said.
13 **HEARING OFFICER SULTANIK:** Okay. I'll
14 sustain that aspect of the objection.
15 What is your understanding of what happened
16 here?
17 **THE WITNESS:** My understanding is that
18 Mr. Malofiy sent an email to Mr. Freund stating in
19 there that Mr. Moorehead will not return. And my
20 understanding is that through an email that
21 Mr. Moorehead sent directly to me that he will not be
22 returning to work.
23 **MR. TAYLOR:** Thank you, Mr. Pidgeon. I
24 have no further questions.
25 I'd like to move in my Exhibits.

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1 **HEARING OFFICER SULTANIK:** Any objections
2 to the Exhibits?
3 **MR. MALOFIY:** Are you including the
4 subparts of the Deposition as well, the Deposition?
5 **MR. TAYLOR:** Which parts?
6 **MR. MALOFIY:** Excuse me, the subparts of
7 the Transcript from the Loudermill?
8 **MR. TAYLOR:** I'm sorry, I don't understand.
9 **MR. MALOFIY:** Loudermill, there's a
10 Transcript here, but it doesn't have all the
11 attachments. It only has Defense Counsel's
12 attachments, not Plaintiff's Counsel's attachments. I
13 want to make sure that, we're creating a record here,
14 and we're attaching a Transcript, it needs to be a
15 complete Transcript.
16 **MR. TAYLOR:** We can include. I don't have
17 your Exhibits. Yes, we can include everything that was
18 admitted from the Loudermill, I'm in agreement with
19 that.
20 **MR. MALOFIY:** I have no objection.
21 **HEARING OFFICER SULTANIK:** With that
22 stipulation, we will admit all of the Exhibits, with
23 the understanding that the Exhibits to the Loudermill
24 proceeding will reflect not only the Administration's
25 Exhibits that were submitted in the Loudermill

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1 proceeding, but also Mr. Moorehead's Exhibits.
2 **MR. MALOFIY:** Thank you.
3 **MR. TAYLOR:** Correct.
4 **HEARING OFFICER SULTANIK:** Cross examine.
5 **MR. MALOFIY:** Yes.
6 **CROSS EXAMINATION**
7 **BY MR. MALOFIY:**
8 **Q. You said in the beginning here that you**
9 **were part of the internal investigations of**
10 **Mr. Moorehead. That's what you were asked and you said**
11 **you were part of that, correct?**
12 **MR. TAYLOR:** Objection, he never testified.
13 **MR. MALOFIY:** That's what the record is. I
14 wrote that down. I'm absolutely certain.
15 **MR. TAYLOR:** I'm --
16 **MR. MALOFIY:** I'm not asking you the
17 question. I'm asking this man the question.
18 **MR. TAYLOR:** I'm objecting. I'm entitled
19 to get my objection out. He testified --
20 **HEARING OFFICER SULTANIK:** Let me hear his
21 objection, one person at a time, please.
22 **MR. TAYLOR:** I believe he testified he's
23 done an investigation before in the past.
24 I don't think he testified that he
25 investigated Mr. Moorehead.

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1 **MR. MALOFIY:** We'll have to go back to the
2 record.
3 **HEARING OFFICER SULTANIK:** Okay. I think,
4 I'm going to allow the question to the extent that
5 Mr. Malofiy can inquire of the witness what his extent
6 of participation was on the investigation.
7 **MR. TAYLOR:** I have an additional objection
8 to the extent that the investigation is irrelevant to
9 Mr. Moorehead's decision to not return to work. This
10 is a matter of, did he receive a return to work order
11 and did he ignore it?
12 **HEARING OFFICER SULTANIK:** That I --
13 **MR. MALOFIY:** The question is why?
14 **HEARING OFFICER SULTANIK:** Let me just
15 finish. I agree that my jurisdiction as Hearing
16 Officer is only limited to address the charges that are
17 being brought here.
18 So to the extent that the history of the
19 investigation is going to be of issue here, I will have
20 to hear relevancy issues on the part of Mr. Moorehead
21 to rule in favor of that.
22 But right now this is Cross Examination.
23 And I am okay with him asking preliminarily what his
24 role was on the investigation.
25 **BY MR. MALOFIY:**

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1 **Q. Sir, the investigation as to Mr. Moorehead,**
2 **what was your role?**
3 A. My role was very limited. I was involved
4 initially with the, discussing the matter with
5 Mr. Moorehead. I was also involved with checking on
6 how Mr. Moorehead secured the day that he took off.
7 And the third thing is, I was trying to
8 reacquire for the District the devices that
9 Mr. Moorehead had in his possession. And I drove to
10 his house, knocked on his door, and no answer and I
11 left.
12 **Q. As to the day he took off, as the device is**
13 **in his possession, I missed the other thing you had**
14 **mentioned?**
15 A. I was involved initially in the discussion
16 with Mr. Moorehead about the situation.
17 **Q. What situation is that?**
18 A. Of his taking off and going to Washington,
19 D.C.
20 **Q. When was that?**
21 A. The specific date, I don't know off the top
22 of my head.
23 **Q. January 7th, if I refresh your**
24 **recollection?**
25 A. It could very well be, yes.

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1 **Q. I'm sorry, I'll restate it. January 8th,**
2 **does that refresh your recollection?**
3 A. It was right around there somewhere.
4 (Whereupon, a discussion was held off the
5 record.)
6 **BY MR. MALOFIY:**
7 **Q. So initially, as to why he took off and why**
8 **he went to Washington, also the day he took off and**
9 **also his devices. Was there anything else?**
10 A. That's all I can remember at this time.
11 **Q. Who did you speak to in regard to that**
12 **matter?**
13 A. Which matter?
14 **Q. Why he took off, Washington, the day he**
15 **took off, his devices, the things you just testified**
16 **to?**
17 A. I spoke to Mr. Moorehead on why he took
18 off.
19 **Q. Anyone else?**
20 A. Mr. Freund actually conducted the
21 investigation, I was just in the room.
22 **Q. Who else was in the room?**
23 A. I believe Mr. Moorehead had a
24 representative with him. But I don't recall
25 specifically who it was.

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1 **Q. Was this before or after the FBI was**
2 **involved?**
3 A. I don't know when the FBI was involved.
4 **Q. Are you aware of whether or not the FBI was**
5 **involved, sir? You're under oath?**
6 A. I had heard through the grapevine through
7 hearsay that the FBI was involved, but I never received
8 anything official.
9 **Q. When was the first time you learned that**
10 **the FBI was involved?**
11 A. That I don't know.
12 **Q. It wasn't today; was it?**
13 A. No, it was not today.
14 **Q. It wasn't at the Loudermill Hearing; was**
15 **it?**
16 A. It was not at the Loudermill Hearing. You
17 asked me what the date was, I told you I don't know,
18 specifically.
19 **Q. If you don't know, who does know?**
20 A. I don't know. When I found out --
21 **Q. Does the FBI know?**
22 A. I don't know what they know. You'd have to
23 ask them that.
24 **Q. Did you speak to the FBI?**
25 A. I did not.

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1 **Q. Did you write them any letters?**
2 **HEARING OFFICER SULTANIK:** I'm going to
3 just ask a clarification question. Why is the FBI
4 issue at issue as to whether or not Mr. Moorehead is
5 coming back to work?
6 **MR. MALOFIY:** Are you asking me that?
7 **HEARING OFFICER SULTANIK:** Yes, I'm asking
8 you that.
9 **MR. MALOFIY:** Because he has a Fifth
10 Amendment Right, and there's an ongoing investigation,
11 or any investigation, that puts this man in harm and
12 possibly him and his family in jail.
13 Why would he go to an environment which is
14 hostile and is unsafe, and he doesn't even have a
15 disclosure of his Constitutional Rights afforded by
16 that flag right there. That's why.
17 So you want him to go to a situation where
18 they're not being candid about acting as a secret arm
19 for the FBI and interrogating this man, when he did
20 nothing wrong. And that's why.
21 **MR. TAYLOR:** Wait, can you say that
22 question again? Was that a question or a statement?
23 **MR. MALOFIY:** No, that was a response to
24 the Hearing Officer, Mr. Taylor.
25 May I proceed?

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1 **HEARING OFFICER SULTANIK:** Mr. Taylor, do
2 you want him to clarify what he just said?
3 **MR. TAYLOR:** Yes, I don't know, I don't
4 understand what you're --
5 **MR. MALOFIY:** I'm sorry, let me break it
6 down. So, we have a United States Constitution. As
7 far as that United States Constitution, we have certain
8 rights afforded in the Constitution.
9 One of the rights which I'm most concerned
10 about for Mr. Moorehead's safety in going back to
11 school --
12 (Reporter requested clarification.)
13 **Q. One of the rights that I'm most concerned**
14 **about was Mr. Moorehead returning to school, and**
15 **Mr. Moorehead is concerned about is his Fifth Amendment**
16 **Right.**
17 **And what has just transpired here is that**
18 **we have the HR, Human Resources Director, of a School**
19 **Administration, who has never revealed that fact, under**
20 **oath, or in any way, to Mr. Moorehead.**
21 **Now, this is the man that he's supposed to**
22 **trust in putting him back to school. Supposed to trust**
23 **when he receives letters about why he must go back to**
24 **school.**
25 **But actually, he is aware that there was**

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1 **FBI involvement with the Administration, but he doesn't**
2 **know when.**
3 **The problem is is that we don't even know**
4 **if it ended.**
5 **HEARING OFFICER SULTANIK:** Mr. Malofiy, my
6 recollection of his testimony was he testified that he
7 heard through hearsay that there was FBI involvement,
8 but that he was not, himself, involved in that, nor did
9 he have direct information regarding the FBI
10 investigation. That's the testimony I heard.
11 **MR. MALOFIY:** I think that when there's a
12 hearsay rumor, or if you've heard, as an HR Director,
13 that there might be an FBI investigation into a
14 student, and I think if you're questioning -- excuse
15 me, not student, Teacher, and you're questioning that
16 Teacher, I think there's an absolute duty under the
17 Constitution to disclose that fact.
18 **MR. TAYLOR:** I don't know about this
19 Constitution obligation that Mr. Malofiy is now
20 creating and inventing for purposes of argument. If he
21 has Case Law, then I'd love to see it.
22 **MR. MALOFIY:** It's called the United States
23 Constitution.
24 **MR. TAYLOR:** He has an obligation --
25 **MR. MALOFIY:** A Government cannot act as an

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1 arm of another Government institution like the FBI and
2 go into his documents, go into his documents, go into
3 his devices, search his devices, search his personal
4 things.
5 That's a Fourth Amendment violation,
6 against search and seizure.
7 **MR. TAYLOR:** You have an avenue. You have
8 a course. You have --
9 **THE REPORTER:** Wait, wait, wait. You're
10 both speaking at the same time. Help me, Mr. Sultanik.
11 **HEARING OFFICER SULTANIK:** No, no, thank
12 you. You took the words out of my mouth. Okay.
13 We're going to speak one at a time. So
14 let's go back to the question. What question is before
15 Mr. Pidgeon at this point?
16 **MR. MALOFIY:** It was actually Mr. Taylor
17 not understanding why I felt that what Law afforded him
18 certain rights. And I had explained it was the
19 Constitution.
20 **MR. TAYLOR:** Thank you for the
21 miseducation.
22 **MR. MALOFIY:** Miseducation? Boy oh, boy.
23 Law 101.
24 **MR. TAYLOR:** Do you have a question?
25 **HEARING OFFICER SULTANIK:** Gentlemen, let's

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1 proceed.
2 **BY MR. MALOFIY:**
3 **Q. Sir, would you agree that as a Government**
4 **agency, that you have to follow the Constitution of the**
5 **United States?**
6 **MR. TAYLOR:** Objection. I don't think
7 that's relevant.
8 **HEARING OFFICER SULTANIK:** Look, I'm going
9 to, I'm going to allow him to answer the question.
10 I'll allow him to answer the question.
11 **THE WITNESS:** I believe we all have an
12 obligation to follow the Constitution.
13 **BY MR. MALOFIY:**
14 **Q. Now, in the questioning of Mr. Moorehead,**
15 **was there any wiretaps, sir?**
16 A. Not that I'm aware of.
17 **Q. All right. You said that you learned from**
18 **somebody about FBI involvement. Is that notated in**
19 **Mr. Moorehead's HR file?**
20 A. No.
21 **Q. That you heard something of this nature?**
22 A. No.
23 **Q. It's not?**
24 A. No.
25 **Q. We asked for you to produce documents and**

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1 **things related to Mr. Moorehead's HR file and the**
2 **investigation, which you said that you did have, that**
3 **you were involved in. Do you have any papers in that**
4 **regard?**
5 A. I didn't say anything about that. You'd
6 have to refer to our Attorneys for that.
7 **Q. No, no, I'm asking you. There was a**
8 **Subpoena, I asked for certain things, submitted, it was**
9 **granted.**
10 A. Nobody asked me anything.
11 **Q. No one asked you anything?**
12 A. I don't have that.
13 **Q. You're the HR Director, correct?**
14 A. I am the HR Director, actually the
15 Executive Director of HR.
16 **MR. TAYLOR:** Objection to the extent that
17 Mr. Malofiy is asking for FBI documents and papers.
18 They have nothing to do, there's been no testimony that
19 was related to a decision to order Mr. Moorehead back
20 to work. He testified --
21 **MR. MALOFIY:** It goes directly to putting
22 him in a situation that violates his Fourth, Fifth
23 Amendments, and 14th, yes.
24 **MR. TAYLOR:** But there was no testimony
25 that the investigation played a part in the decision to

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1 return to work --
2 **MR. MALOFIY:** If you want me to put you on
3 the stand, I will. You want me to do that?
4 **MR. TAYLOR:** Are you threatening me? Hey,
5 go for it.
6 **MR. MALOFIY:** I'm asking you if you'd like
7 to take the stand.
8 **MR. TAYLOR:** Go for it.
9 **HEARING OFFICER SULTANIK:** Hold on, hold
10 on.
11 First of all, at this point in time, I
12 think the genesis of the question of Mr. Malofiy is
13 whether or not the witness was directed to, pursuant to
14 the Subpoena, provide additional evidence or
15 documentation from the personnel file of Mr. Moorehead.
16 I think that's the nature of the question.
17 **MR. MALOFIY:** That is.
18 **HEARING OFFICER SULTANIK:** To that extent,
19 I will allow the question to see if the witness has
20 gathered the entire personnel file of Mr. Moorehead for
21 the purposes of the Subpoena. I'm just going to --
22 **MR. MALOFIY:** Thank you.
23 **THE WITNESS:** I do not have a copy of the
24 personnel file. I could get one if you need me to.
25 **HEARING OFFICER SULTANIK:** Okay. And the

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1 question that I think that is being raised by the
2 Administration, however, is that anything beyond the
3 testimony today would probably have no probative value
4 to the Administration's case, that is there; is that
5 what the issue is?
6 **MR. TAYLOR:** That's correct, that's
7 correct.
8 **HEARING OFFICER SULTANIK:** And the question
9 that I have for Mr. Malofiy is, the only thing that I
10 have heard from you with respect to this issue is that,
11 am I correct that you do not dispute the fact that
12 Mr. Moorehead has not returned to work, that's not a
13 fact that I need to find? You agree with that?
14 **MR. MALOFIY:** No, I'm going to do my Cross
15 Examination, and then you'll elicit, I think based on
16 that, I mean breaking up a Cross Examination to ask
17 factual questions, it's just quite frankly, it's
18 impossible.
19 **HEARING OFFICER SULTANIK:** Ask your next
20 question, okay. What's your next question?
21 **BY MR. MALOFIY:**
22 **Q. Sir, did you see the Subpoena that was**
23 **handed to Counsel before you appeared here today?**
24 **A.** I received an email over the weekend, in
25 which other, another individual was subpoenaed. And I

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1 saw that my name was listed in there.
2 Did I see the whole Subpoena? No, I was
3 out of town. I did not have an opportunity to look at
4 it.
5 **Q. I'm going to, I'm going to read you here,**
6 **Subpoena.**
7 **HEARING OFFICER HAAZ:** Is there an Exhibit?
8 **MR. MALOFIY:** It was the Subpoenas that
9 were attached to the file. I think I have another copy
10 perhaps, but let me just check. I didn't think it
11 would be an issue because it was granted. May I
12 approach?
13 **HEARING OFFICER HAAZ:** Yes.
14 **MR. MALOFIY:** Counsel, do you have one
15 handy?
16 **MR. TAYLOR:** Do you have an extra copy?
17 **MR. MALOFIY:** I may or may not.
18 **HEARING OFFICER HAAZ:** We'll mark this as
19 Moorehead 2.
20 (Whereupon, the following Exhibit was
21 marked for identification as follows:
22 Moorehead Exhibit No. 2, a Subpoena.)
23 **MR. TAYLOR:** I received it by email late
24 Friday, I suppose.
25 **HEARING OFFICER SULTANIK:** Yes, the

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1 Subpoenas were not issued until close to 6:00 p.m. on
2 or around 6:00 p.m. on Friday.
3 **MR. MALOFIY:** May I approach, Mr. Taylor?
4 I have to give one to the witness. But let
5 me share what we're going to focus on. Right here.
6 (Whereupon, a discussion was held off the
7 record.)
8 **MR. TAYLOR:** I understand, but my objection
9 still stands. That it's not relevant to the decisions
10 that were made.
11 **MR. MALOFIY:** I understand.
12 May I approach the witness?
13 **HEARING OFFICER SULTANIK:** You may.
14 **BY MR. MALOFIY:**
15 **Q. You never saw this Subpoena before sitting**
16 **here, correct?**
17 **A.** I have not reviewed the whole Subpoena.
18 Like I said, I saw my name on the top of the Subpoena
19 but I was in my car at a red light when I looked at it.
20 **Q. You see how at the bottom there it says**
21 **Hearing Officer and it's signed, I believe that's Mr.**
22 **Sultanik?**
23 **HEARING OFFICER SULTANIK:** That is correct.
24 **THE WITNESS:** Yes.
25 **BY MR. MALOFIY:**

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1 **Q. And it says here: You're hereby ordered to**
2 **appear for the Hearing and give testimony on behalf of**
3 **Jason Moorehead. And it asks you to bring with you the**
4 **following: all records and information related to**
5 **Jason Moorehead from January 5th, 2021 to present. Do**
6 **you have those documents and records here today sir?**
7 **A.** I have whatever our Attorneys have provided
8 you.
9 **Q. I didn't receive them. I'm talking about**
10 **all records, information related to Jason Moorehead**
11 **from January 5th, 2021 to the present. Do you have**
12 **anything other than what Counsel provided me?**
13 **A.** I do not.
14 **Q. I asked for including, but not limited to**
15 **any investigation, communications with law enforcement,**
16 **and recommendations. Do you have anything related to**
17 **investigations, communications with law enforcement,**
18 **and recommendations?**
19 **A.** Everything that I have provided to the
20 investigation and communications are in the Exhibit
21 packet that Mr. Taylor has produced.
22 **Q. You did admit that you have an HR file for**
23 **Mr. Moorehead, correct?**
24 **A.** Yes, we do.
25 **Q. You could get that HR file, correct?**

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1 A. Yes, I can.
2 **Q. But you didn't bring it here today,**
3 **correct?**
4 A. I don't see in here where it says bring the
5 HR file.
6 **Q. It says all records and information related**
7 **to Jason Moorehead from January 5th, 2021 to present.**
8 **Did you do that?**
9 A. That personnel file has been in existence
10 for a lot longer than from January 5th. That's not
11 clear to me.
12 **Q. We're just asking January 5th. You didn't**
13 **even see this before you sat down here?**
14 A. No, I know, but it's not clear to me.
15 **Q. How long would it take you to get that**
16 **file?**
17 A. It's right upstairs.
18 **MR. MALOFIY:** Do you mind if we take an
19 adjournment, Hearing Officer? It's a very simple
20 request. It's right upstairs, pursuant to the
21 Subpoena.
22 **HEARING OFFICER SULTANIK:** We're not going
23 to adjourn. If anything there will be a recess, but I
24 need to hear from the Administration on this issue.
25 **MR. MALOFIY:** Excellent.

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1 **THE WITNESS:** If I can, Mr. Sultanik, if
2 you mind, there's nothing in that file that's not in
3 here.
4 **BY MR. MALOFIY:**
5 **Q. Wait a second. How do you know that? Did**
6 **you do an analysis of the two?**
7 A. That's going to take me much longer and
8 then you're going to have to do something else if I
9 have to do an analysis of the two.
10 **Q. We're here on his discipline, we're here on**
11 **his matter.**
12 A. Right.
13 **Q. Things were said and disclosed today for**
14 **the first time. And it's absolutely relevant, Your**
15 **Honor, it's pursuant to the Subpoena. It's either**
16 **violating the Subpoena or it's not. We would ask that**
17 **this is produced. I mean, sir. Mr. Hearing Officer.**
18 **HEARING OFFICER SULTANIK:** Mr. Pidgeon, to
19 the best of your knowledge, the documents that exist in
20 the personnel file on or after January 5, 2021, is
21 there any difference between what has been produced as
22 part of this Hearing and what your recollection is in
23 that personnel file?
24 **MR. MALOFIY:** He testified he couldn't
25 figure that out without looking at it, and it would

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1 take time.
2 **MR. TAYLOR:** Objection. I think the
3 Hearing Officer is entitled to a response to his
4 question.
5 **MR. MALOFIY:** I understand that, but I
6 understand --
7 **HEARING OFFICER SULTANIK:** I just wanted a
8 clarification.
9 **THE WITNESS:** I don't believe there's
10 anything else in the file, to my knowledge, that's not
11 already in the record.
12 **MR. MALOFIY:** We would obviously object to
13 that. We would ask for a short break for him to go a
14 couple floors up and grab his file. We can look at it
15 with the Hearing Officer, if that's necessary.
16 **MR. TAYLOR:** Objection. He explained
17 there's nothing in the file that's not been produced
18 already.
19 **MR. MALOFIY:** That's not what he said. His
20 testimony, very clear, he said it would take him a lot
21 of time to determine whether or not that which is in
22 his file is there.
23 Plus he said it goes back before January
24 5th. So he said it would take time.
25 **MR. TAYLOR:** In terms of the totality of

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1 Mr. Moorehead's employment file, I'm sure how many
2 years he has been with the District. There's tons of
3 documents in there, and they're completely unrelated
4 the purpose of what we're here for today.
5 **MR. MALOFIY:** But let's talk while we're
6 here. For 12 months --
7 **MR. TAYLOR:** You're here to --
8 **MR. MALOFIY:** Let me finish. I gave you an
9 opportunity.
10 For twelve months he has been sitting here
11 because there was a seven-month investigation. I don't
12 think a couple minutes to figure out what's in the HR
13 file is a big issue.
14 **MR. TAYLOR:** But everything that is
15 relevant in the HR file has already been produced.
16 You're here to use this as a fishing expedition for the
17 lawsuit that you later on intend on filing.
18 **MR. MALOFIY:** I already filed the lawsuit.
19 **MR. TAYLOR:** That's what you're doing --
20 **MR. MALOFIY:** I filed the lawsuit already,
21 sir.
22 **THE REPORTER:** Wait, you're both talking at
23 the same time again. One at a time.
24 **HEARING OFFICER SULTANIK:** Thank you.
25 This is what I'm going to do. I think you

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1 can continue with your Cross Examination. But
2 following the Cross Examination of the witness, we'll
3 leave the witness's testimony open.
4 And during a break, we can request that
5 there be compliance with the Subpoena and have things
6 copied from January 5, 2021 to the present date.
7 Counsel can look at it. Counsel for Mr. Moorehead can
8 look at it.
9 Certainly Counsel for the Administration
10 can look at it. And to the extent that any further
11 Cross Examination is necessary, they'll have an
12 opportunity to review that and use that as they will.
13 **MR. MALOFIY:** Thank you, thank you.
14 I'll move forward.
15 **BY MR. MALOFIY:**
16 **Q. Do you have access to the records of the**
17 **Office of Superintendent?**
18 A. No, I do not.
19 **Q. Do they have different records than you**
20 **would have in an HR file for a Teacher?**
21 A. You'd have to ask the Superintendent. I
22 don't know what records are in his office.
23 **Q. Okay. Is there an Office of the**
24 **Superintendent that maintains records for the**
25 **Superintendent?**

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1 A. I don't think I follow you.
2 **Q. Just asking whether or not you're aware**
3 **that there's a separate file contained for**
4 **Mr. Moorehead from the Office of the Superintendent?**
5 A. I'm not aware.
6 **Q. Do you maintain personnel files for also**
7 **Administration or no?**
8 A. For all employees we have a personnel file.
9 **Q. So what's the proper procedure if the FBI**
10 **had reached out to any of the Administration to inquire**
11 **as to a Teacher, what would be the proper procedure**
12 **based on HR policy?**
13 A. Again, I'm not necessarily following you.
14 If I may, though. If the FBI reached out to an
15 Administrator or Administration --
16 **Q. Right.**
17 A. -- in regards to an employee.
18 **Q. Right.**
19 A. If they were just asking a simple question,
20 it would probably be no, nothing. But if there was a
21 specific Report or something like that, we would keep a
22 documented form of that in some way.
23 **Q. Where would that exist?**
24 A. It could be either in the Superintendent's
25 personnel file, personal file, not personnel, personal

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1 files. Or if referred to me, it would go in the
2 employee's file.
3 **Q. Did you look into Mr. Moorehead's file for**
4 **any of the Reports or investigations from the FBI?**
5 A. As far as I know, there are no Reports or
6 investigations from the FBI.
7 **Q. When was the last time you looked at his**
8 **file?**
9 A. It was probably early on in the
10 investigation.
11 **Q. You mean about a year ago?**
12 A. Probably about seven months. Or I know I
13 looked at it before we had our meeting with him in
14 January. And I believe you said it was January 8th. I
15 looked at the personnel file at that point. I don't
16 know that I've looked at it since.
17 **Q. So, those FBI files may reside in his HR**
18 **file, correct?**
19 A. Highly unlikely. Because most files that
20 come in, most, not all, have to come through my office
21 before they go into the personnel file.
22 **Q. What if it's an ongoing issue or dispute**
23 **with a Teacher, where they're suspended, would it still**
24 **go through you or go through some other channel or**
25 **otherwise?**

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1 A. Typically for items going into the
2 personnel file would come through my office. Not for
3 the other issues you were describing.
4 **Q. So if there was an FBI Report, if there was**
5 **an FBI investigation, if there was since January 5th,**
6 **of last year, that should be in his file, correct?**
7 A. It depends on the subject of the
8 investigation and those so on and so forth. Not just
9 in general. I'm not going to say that we wouldn't have
10 enough room in the files to put everything on
11 everybody, whether it be good, bad, or indifferent. So
12 certain things go in the file, certain things don't.
13 They go into other files or it goes back to the
14 individual.
15 **Q. You would agree with me when the FBI is**
16 **investigating somebody, it's not to give them a merit**
17 **award, correct?**
18 A. I don't know what the FBI investigates on a
19 regular basis.
20 **Q. Okay.**
21 A. I would assume it's not a merit award.
22 **Q. And usually, I mean, I don't expect you to**
23 **know everything that's in the file. But usually when**
24 **the FBI becomes involved or actually does an**
25 **investigation into a Teacher, that's something that**

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1 **it's not your kind of garden variety Report that comes**
2 **through for a Teacher, correct?**
3 A. I've never had the FBI investigate a
4 Teacher that I'm aware of. I've heard, as we already
5 stated with Mr. Moorehead's case, I heard hearsay about
6 that. But there's never been a Report by the FBI given
7 to me in my years here in the Allentown School
8 District.
9 **Q. When you say there was hearsay, what do you**
10 **mean hearsay, from whom?**
11 A. Somebody just, I don't remember whom. But
12 somebody told me that the FBI is looking into this
13 case, also.
14 **Q. You did nothing to notate his account or**
15 **notify him of that, right?**
16 A. Again, I was not doing the investigation,
17 our Attorneys were doing the investigation.
18 **Q. I'm asking you. You said it was hearsay.**
19 **You said the FBI was involved. How did you notate his**
20 **account, if at all?**
21 A. Why would I notate his account, I'm not
22 even sure what that means.
23 **Q. You said never have you seen a situation**
24 **where the FBI --**
25 A. No, I said I never saw a Report from the

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1 FBI.
2 **Q. But you've seen investigations by the**
3 **FBI --**
4 A. I have not seen any investigation or any
5 investigations from the FBI ever.
6 **Q. Let me ask you, how many years have you**
7 **been involved in the Allentown School District?**
8 A. Three and-a-half years, as I stated
9 earlier.
10 **Q. Three and-a-half?**
11 A. Um-hum.
12 **Q. How long have you been in the role as an HR**
13 **person for your employment?**
14 A. What year is it now, '21? I've been a an
15 HR Director or Executive Detector for 12 years.
16 **Q. 12 years?**
17 A. Um-hum.
18 **Q. How many times have you seen a situation**
19 **where the FBI was investigating a Teacher?**
20 A. Zero.
21 **Q. The only one you even have any recollection**
22 **of is hearsay in regards to Mr. Moorehead, correct?**
23 A. Correct.
24 **HEARING OFFICER SULTANIK:** Mr. Pidgeon,
25 just for my clarification, from the testimony, is it

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1 your testimony today that you do not have any specific
2 recollection of any FBI documentation, report, or
3 information getting into the personnel file, whether
4 before or after January 5, 2021, for Mr. Moorehead?
5 **THE WITNESS:** That is correct.
6 **HEARING OFFICER SULTANIK:** You're not aware
7 of it? Okay.
8 **BY MR. MALOFIY:**
9 **Q. You're not aware of it, but the last time**
10 **you looked was early or sometime in January, correct?**
11 A. I think I've already stated that, yes.
12 **Q. It was sometime after that point which you**
13 **became aware of the first time in your 12 years, 13**
14 **years involved as an HR Director that only one time**
15 **that you even heard that a Teacher was being**
16 **investigated, and that was Mr. Moorehead as he sits**
17 **here today, correct?**
18 A. I don't even know that he was being
19 investigated. I just know that the FBI, I was told the
20 FBI was involved.
21 **Q. You knew or you were told?**
22 A. Again, hearsay I believe I was told that
23 the FBI was involved in looking at a situation. I
24 don't know that they were investigating Mr. Moorehead
25 or anybody else.

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1 I know they were looking at it from reading
2 the newspaper or watching TV, from the situation in
3 Washington, D.C.
4 **Q. Where was that, where did that conversation**
5 **occur, just take it back?**
6 A. Again, I don't remember.
7 **Q. Were you talking on the phone?**
8 **MR. TAYLOR:** Objection. This has been
9 asked three or four times. He said he doesn't recall.
10 **HEARING OFFICER HAAZ:** Objection overruled.
11 **HEARING OFFICER SULTANIK:** I agree it's
12 been asked and answered.
13 **BY MR. MALOFIY:**
14 **Q. Just to be clear you did nothing to notate**
15 **his file once this information came to your --**
16 **HEARING OFFICER SULTANIK:** It's also asked
17 and answered. He already said that he did not do
18 anything to annotate this in the file.
19 **MR. MALOFIY:** All right. I'll move
20 forward.
21 **BY MR. MALOFIY:**
22 **Q. You said that something like that might**
23 **exist at the Office of the Superintendent, correct, or**
24 **the Superintendent's own personal file, correct?**
25 A. I did not say that. I said I didn't know

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1 what the Superintendent would keep in a personnel file.
2 But they might.
3 **Q. Okay. You would agree with me that the**
4 **events in Washington, D.C. where Mr. Moorehead was at a**
5 **rally, the rally that occurred on January 6th?**
6 **(Reporter requested clarification.)**
7 **Q. Would you agree with me that the events**
8 **where Mr. Moorehead was in Washington, D.C. for a**
9 **conservative rally occurred on January 6th, correct?**
10 A. Yes.
11 **Q. And you'd agree that after your**
12 **investigation and questioning him, that he was not at**
13 **the U.S. Capitol Building and not involved in the**
14 **insurrection, correct?**
15 A. So, I did not do the investigation and I
16 did not ask questions. I asked some follow-ups and
17 some clarifying type questions, but I was not in charge
18 of that investigation when we --
19 **Q. You'd agree --**
20 **THE REPORTER:** I'm sorry, wait until he
21 gets his answer all the way out.
22 I was not involved?
23 **THE WITNESS:** I did not conduct the
24 investigation.
25 **BY MR. MALOFIY:**

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1 **Q. What did you learn as to his whereabouts**
2 **and whether or not he was involved in the US Capitol**
3 **Building insurrection, what did you learn?**
4 A. I know what Mr. Moorehead told me. I don't
5 know that I learned anything.
6 **Q. What did he tell you?**
7 A. He told me that he was not near the
8 Capitol.
9 **Q. Do you have any reason to dispute that, do**
10 **you have any facts as you sit here today to dispute**
11 **that, yes or no?**
12 A. It's not my decision to make.
13 **Q. I'm asking you, this would be the reason**
14 **for his suspension, initially, correct? Isn't that**
15 **right?**
16 **HEARING OFFICER SULTANIK:** Let me just ask
17 the question. What does the suspension have to do with
18 this proceeding today?
19 **MR. MALOFIY:** Everything. I mean, I think
20 we made it clear in our briefing. I think we made it
21 clear in our bias. I think we made it clear in our,
22 having concerns about this Hearing occurring.
23 I mean, I don't know how more clear I can
24 make it. I don't want to beat a dead horse. I think I
25 made myself clear on the issues of why it is important.

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1 There's an issue of pretext that's clear.
2 He was suspended for months and months and months when
3 they knew from day two that he wasn't part of that
4 Capitol Building riot or insurrection.
5 And months and months later they did
6 nothing to correct the record. That's why it's
7 relevant.
8 And it's pretextual to now say he's not
9 returning to work when there's a hostile environment.
10 It's for that reason. And it's unsafe.
11 **HEARING OFFICER SULTANIK:** The reason why
12 I'm raising this is that Exhibit A, which has been
13 entered into evidence in the first paragraph of a
14 letter to Mr. Moorehead states: After fully
15 investigating your involvement in the events of January
16 6th, 2021, in Washington, D.C., the District has
17 concluded that your presence at the January 6th
18 gathering did not violate School Board policy 419
19 relating to Teacher non-school activities.
20 The District does conclude, however, that
21 you violated the District's acceptable use policy by
22 using your District-owned electronic equipment for
23 non-school purposes.
24 But that ultimately is not the basis of why
25 we're here today, which is why I'm asking the question

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1 as to what relevancy does the suspension have to
2 today's proceeding?
3 **MR. MALOFIY:** Because he never reinstated
4 him because of the qualifications listed. And we never
5 agreed to those qualifications. And we're going to get
6 to that.
7 **HEARING OFFICER SULTANIK:** Okay. The only
8 qualifications that I see here is that a directive,
9 that's not a proposal, you don't have to agree to a
10 directive of management that you are to use District
11 electronic equipment for school purposes. As directed
12 by School District policy.
13 And secondly, that you're expected to
14 teach in accordance with the School Code and Standards.
15 And avoid offending the morales of the community, the
16 morals of the community, rather.
17 And third, you'll undergo training for
18 cultural competencies. Those are the three
19 requirements that were imposed.
20 **MR. MALOFIY:** Again, just note that I'm in
21 the middle of my Cross Examination of a key witness,
22 the only one they're putting on. Again, Mr. Sultanik,
23 which is more or less arguing the legal position of the
24 District, the Board, because he represents both?
25 **HEARING OFFICER SULTANIK:** I'm just trying

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1 to understand -- sorry. I'm trying to understand the
2 scope of your questioning about the underlying
3 suspension.
4 That is what I was just trying to assess
5 when that is, doesn't appear to me to be of issue
6 anymore.
7 **BY MR. MALOFIY:**
8 **Q. Do you have Exhibit A, there, sir?**
9 A. Yes, I do.
10 **Q. Can you get it?**
11 **MR. TAYLOR:** Do you have it?
12 **Q. Take a look. After fully investigating**
13 **your involvement in the events of January 6th, 2021, in**
14 **Washington, D.C., the District has concluded that your**
15 **presence at the January 6th gathering did not violate**
16 **School Board Policy 419 relating to Teacher**
17 **non-school activities. Do you see that?**
18 A. Yes I do.
19 **Q. Do you dispute that?**
20 A. No.
21 **Q. Okay. And to be clear, on the second page,**
22 **that's your signature it says Anthony Pidgeon, correct?**
23 A. Correct.
24 **Q. Executive Director of Human Resources,**
25 **correct?**

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1 A. Yes.
2 **Q. Allentown School District, correct?**
3 A. Yes.
4 **Q. Now, let's go to the second line. The**
5 **District does conclude, however, that you violated the**
6 **District's acceptable use policy by using your District**
7 **owned electronic equipment for non-school purposes. Do**
8 **you see that?**
9 A. Yes.
10 **Q. Now, isn't it true that the FBI was**
11 **involved in the examination of his electronic devices,**
12 **yes or no?**
13 A. I don't know.
14 **Q. Did you ever look into that?**
15 **MR. TAYLOR:** Objection. He said he doesn't
16 know.
17 **THE WITNESS:** If I don't know that they're
18 even asking about it, how can I look into it?
19 **MR. MALOFIY:** You may have looked into it,
20 you still didn't find the answer. Did you even look
21 into it?
22 **MR. TAYLOR:** Objection. He said he doesn't
23 know.
24 **BY MR. MALOFIY:**
25 **Q. Did you look into it?**

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1 **Let me ask it a different way. You haven't**
2 **looked at his HR file since January, correct, you said?**
3 A. Approximately, yes.
4 **Q. This letter, July 16th, 2021, would this be**
5 **in his HR file; yes or not?**
6 A. Yes.
7 **Q. Did you personally put this letter in his**
8 **HR file?**
9 A. No, I did not.
10 **Q. Are you the one that maintains**
11 **Mr. Moorehead's HR file, yes or no?**
12 A. I don't know what you mean by maintained.
13 **Q. Let me ask you this way. I do a lot of**
14 **things in my office, but I have help, okay? Are you**
15 **the person that actually puts things in an electronic**
16 **file or is it actually a paper file? How does it**
17 **exist, tell me?**
18 A. It's a paper file.
19 **Q. Do you actually manage Mr. Moorehead's**
20 **paper file, or does somebody else?**
21 A. Again, I don't know what you mean by
22 manage.
23 (Reporter requested clarification.)
24 **THE REPORTER:** One at a time.
25 **Q. Did you place this in his HR file or did**

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1 **somebody else?**
2 A. I already answered that and said no, I
3 didn't place it in it.
4 **Q. Who did?**
5 A. I would assume my Secretary.
6 **Q. Who is your Secretary?**
7 A. Her name is Danielle Trevorah.
8 **Q. Can you spell that?**
9 A. T-R-E-V-O-H-O-H -- no, that's not right. I
10 have to look at it.
11 **Q. We'll come back to that spelling. Has she**
12 **been your Secretary since --**
13 A. Since I've been here.
14 **Q. And she's the one who would maintain that**
15 **paper file as far as physically putting things in that**
16 **file, correct?**
17 A. Again, I don't know what you mean by
18 maintains.
19 **Q. I don't mean to use it in a tricky sense.**
20 **I mean, she's the one who probably put this letter in**
21 **the file, correct?**
22 A. Probably, yes.
23 **Q. And she's the one who probably puts**
24 **whatever letters may --**
25 **HEARING OFFICER HAAZ:** Mr. Malofiy, this is

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1 not a Discovery Deposition. I understand you want to
2 get names for --
3 **MR. MALOFIY:** Are you the Hearing Officer
4 or is Mr. Sultanik?
5 **HEARING OFFICER HAAZ:** Yes. The firm is.
6 **HEARING OFFICER SULTANIK:** We both are.
7 **MR. MALOFIY:** That was never disclosed.
8 **HEARING OFFICER HAAZ:** Will you ask a
9 question that is relevant to the Hearing today?
10 **MR. MALOFIY:** Just to be clear, you're both
11 the Hearing Officer?
12 **HEARING OFFICER HAAZ:** Correct.
13 **HEARING OFFICER SULTANIK:** Yes, the firm.
14 The firm was appointed as Hearing Officer.
15 **MR. MALOFIY:** Your assignment as a Hearing
16 Officer doesn't just identify Mr. Sultanik, it's --
17 **HEARING OFFICER SULTANIK:** It's Fox,
18 Rothschild, LLP.
19 **MR. MALOFIY:** I just want to understand, is
20 it the firm, is it both you guys, or is it
21 Mr. Sultanik, individually?
22 **HEARING OFFICER SULTANIK:** It's the firm
23 that's the appointed Hearing Officer.
24 If you want to make an issue out of
25 nothing, I adopt what Mr. Haaz just said.

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1 **MR. MALOFIY:** I understand that. But the
2 problem is that I have letters from you which says
3 something different. That's a concern I have.
4 **HEARING OFFICER SULTANIK:** Keep on going.
5 **MR. MALOFIY:** The letter I have from you
6 says that --
7 **HEARING OFFICER SULTANIK:** Mr. Malofiy, is
8 this a Discovery proceeding?
9 **MR. MALOFIY:** No, there's an issue with
10 bias and how this proceeding occurs.
11 **MR. TAYLOR:** He's going to -- I'll tap out.
12 **MR. MALOFIY:** Please do not interrupt.
13 **MR. TAYLOR:** I will interrupt.
14 **MR. MALOFIY:** Tell me when you're done.
15 **MR. TAYLOR:** Are you done with Mr. Pidgeon,
16 or are you questioning the Hearing Officer?
17 **MR. MALOFIY:** No. Who are you right now?
18 Tell me when you're done.
19 **MR. TAYLOR:** What?
20 **MR. MALOFIY:** Tell me when you're done
21 talking.
22 **HEARING OFFICER HAAZ:** Why don't we cut it
23 out. Let's let Mr. Malofiy read what he wants to read.
24 **MR. MALOFIY:** Thank you.
25 **HEARING OFFICER HAAZ:** And then we will

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1 proceed from there.
2 **MR. MALOFIY:** The letter I have from
3 Mr. Sultanik on November 19, 2021 says that: I made it
4 very clear that Fox, Rothschild represents the District
5 in its capacity as Solicitor. In the context of this
6 particular Hearing, I, am representing the interest of
7 the Board.
8 That's what it says. And King, Spry is
9 representing the interest of the Administration.
10 I just want to be clear, my understanding
11 is that you're acting as Hearing Officer and not your
12 firm. Do I have a misunderstanding here?
13 **HEARING OFFICER SULTANIK:** I act, I act as
14 Hearing Officer on behalf of my firm.
15 **MR. MALOFIY:** Is there a specific agreement
16 as to this Hearing?
17 **HEARING OFFICER SULTANIK:** There was a
18 Board action on this issue.
19 **MR. MALOFIY:** Okay.
20 **HEARING OFFICER SULTANIK:** There's not a
21 specific agreement on this issue.
22 **MR. MALOFIY:** Does it, does it identify you
23 as the Hearing Officer or your firm, that's what I want
24 to know?
25 **HEARING OFFICER SULTANIK:** I, off the top

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1 of my head, I don't know. But I believe, I believe it
2 was Jeffrey T. Sultanik of Fox, Rothschild, LLP. I
3 believe Mr. Haaz has the perfect right to raise
4 questions on this particular issue.
5 But if you have any question on that, I
6 just adopt, in my capacity, if you're saying as Hearing
7 Officer, everything that he just stated.
8 So right now, what is your question of
9 Mr. Pidgeon?
10 **MR. MALOFIY:** Just note my issue with --
11 **HEARING OFFICER SULTANIK:** What is your
12 question of Mr. Pidgeon?
13 **MR. MALOFIY:** -- lack of clarity as to the
14 represented parties. 3 point 1 issues, as well. But
15 let me move forward.
16 Can you go back to my question? Thank you.
17 **HEARING OFFICER HAAZ:** I think your question
18 was the spelling of the name of Mr. Pidgeon's
19 Secretary.
20 **MR. MALOFIY:** Thank you, I appreciate that.
21 **HEARING OFFICER HAAZ:** And I asked you to
22 move on because it's not relevant to the Hearing.
23 **MR. MALOFIY:** You guys can tag team all you
24 want. I got you covered. All right.
25 **BY MR. MALOFIY:**

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1 **Q.** Let me -- so she would actually maintain
2 the file. I understand that, the physical file. I'll
3 move forward.
4 Let me go down to Exhibit A. Did you know
5 what entity or who actually did the investigation of
6 his electronic devices?
7 A. No, I don't.
8 **Q.** So, who did you speak to in regards to
9 that?
10 A. Our Attorneys.
11 **Q.** Oh, I see. When there's a matter or when
12 it becomes a matter where there's a suspension of a
13 Teacher, does his file then get corralled or get
14 separated someplace else, or is it still maintained
15 with the HR Office?
16 A. It's in the HR Office.
17 **Q.** All right. Have you talked to DFS
18 Consulting as to the inspection of Mr. Moorehead's
19 electronic devices?
20 A. I have not.
21 **Q.** Do you know how many electronic devices
22 were reviewed?
23 A. No, I don't.
24 **Q.** Did you ever, or were you aware if anyone
25 disclosed that the FBI was actually involved in looking

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1 at Mr. Moorehead's electronic devices?
2 A. Again, I have not been involved in any of
3 that, so nobody shared any of that with me.
4 **Q.** How about Magnet Forensics?
5 A. Not familiar with that.
6 **Q.** Do you know if there was one or two FBI
7 Agents that was involved?
8 A. Again, I know nothing about the FBI.
9 **Q.** If you're the HR Director, Executive HR
10 Director, and you're not familiar with this aspect of
11 things, who in the Administration would be?
12 A. In this case, everything was referred to
13 our Solicitors.
14 **Q.** Who is that; is that Mr. Sultanik?
15 A. No, it's Mr. Freund.
16 **Q.** Well, Mr. Sultanik was working with the
17 Board since, what, February? And the Administration,
18 February 17th, right?
19 A. Mr. Sultanik was reported -- or appointed
20 as the District's Solicitor as of July 1.
21 **Q.** Right, but he was involved working?
22 A. He was doing some negotiations with us.
23 Nothing involved in investigations.
24 **Q.** But as far back as February, correct?
25 A. Around there, I'm not sure exactly.

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1 **Q.** I see.
2 Were you made aware that Mr. Moorehead had
3 death threats to himself because of the false
4 information that was propagated by the District?
5 A. When Mr. Moorehead sent me the email, he
6 did clarify or he was very specific with that, so yes.
7 **Q.** What, if anything, did the HR Department do
8 to ensure that the environment at school was safe, if
9 anything?
10 A. Well, I don't know that the environment at
11 the schools were ever in question. He shared with me
12 that the community had done some things, and it was at
13 his home. I don't think anything came through the
14 school.
15 **Q.** You're at the HR meetings, excuse me,
16 you're at the Board meetings, correct?
17 A. I am at the Board meetings, yes.
18 **Q.** Okay. You were at all the Board meetings?
19 A. Yes.
20 **Q.** Do you recall what was said about
21 Mr. Moorehead at the Board meetings?
22 A. Which Board meeting?
23 **Q.** Every Board meeting?
24 A. I don't recall --
25 **Q.** How about February 11th --

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1 **(Reporter requested clarification.)**
2 A. I don't remember specifics that were said.
3 I know there was conversations and quite a few of our
4 community members had, were speaking. It was a virtual
5 meeting, so I wasn't even present at the meeting,
6 itself. It wasn't in this room, it was a virtual
7 meeting.
8 **Q.** You were there?
9 A. Again, as I just said, I was not in this
10 room, I was virtually.
11 **Q.** You were at the virtual meeting?
12 A. Yes.
13 **Q.** What did you say to correct the record when
14 people were saying that Mr. Moorehead was an
15 insurrectionist and breaking into the Capitol building,
16 did you say, you know, that's not true, did you correct
17 the record?
18 A. We do not respond to the public comment.
19 And I couldn't say anything anyway, it would be up to
20 our Board of Directors to say that.
21 **Q.** There's an Administration and there's a
22 Board, correct?
23 A. In the District?
24 **Q.** Yes.
25 A. Yes.

1 **Q. When the Administration were saying things**
2 **that were false about Mr. Moorehead, who you work with,**
3 **who you are the Executive Director of, what, if**
4 **anything, did you do to correct the record?**

5 **MR. TAYLOR:** Objection. Can you restate
6 that again, say it again?

7 **BY MR. MALOFIY:**

8 **Q. When the Administration was making comments**
9 **that were false about Mr. Moorehead and his involvement**
10 **at the Capitol riots and insurrection, what, if**
11 **anything, did you do to correct that?**

12 **MR. TAYLOR:** I don't understand what
13 Administration you're referring to. I don't think he
14 testified to the Administration made false statements.
15 Maybe I missed it.

16 **MR. MALOFIY:** Maybe you missed it.

17 **MR. TAYLOR:** I'm not going to allow him to
18 answer something I don't understand.

19 **MR. MALOFIY:** There's a lot you don't
20 understand here today.

21 **MR. TAYLOR:** What did you say?

22 **MR. MALOFIY:** There's a lot you don't
23 understand, including the Constitution.

24 **HEARING OFFICER SULTANIK:** Let's put aside
25 the invective.

1 **MR. MALOFIY:** What's the role of the HR
2 Department?

3 **HEARING OFFICER SULTANIK:** Mr. Malofiy, if
4 I heard the testimony of the witness accurately, he
5 said earlier that this was not a situation about safety
6 in the schools. This was about safety in the community
7 based upon the death threats received by Mr. Moorehead.
8 That's the testimony I heard a few minutes ago.

9 So I want you to capitalize on that issue
10 and not put words in the mouth of the witness.

11 **MR. MALOFIY:** I'm not putting words in the
12 mouth of the witness. And I appreciate the concerns.

13 **BY MR. MALOFIY:**

14 **Q. Were you at the Board meeting of February**
15 **11th, 2021?**

16 A. I think I've just answered that.

17 **Q. Do you disagree that Mr. Moorehead was**
18 **characterized as a terrorist and a white supremacist**
19 **and insurrectionist? The Board wants to consider, and**
20 **I'm quoting, firing Jason Moorehead for the good of the**
21 **community. He was a planned insurrectionist. He's a**
22 **terrorist. If we aren't careful he's going to come out**
23 **of the jungle and take our children.**

24 **Again, an insurrectionist. The Teacher is**
25 **clearly flaunting for public that he needs to be held**

1 As I understand it, the question that's
2 being posed to Mr. Pidgeon relates to statements that
3 took place at a virtual meeting or meetings subsequent
4 to January 6th, 2021, to the present date. And what
5 actions he took, if any, to correct the record so to
6 speak with respect to these purportedly defamatory
7 statements.

8 I'll admit to you I'm struggling as to what
9 relevancy this has to do with the charges here today.
10 But that to me is the question.

11 **MR. TAYLOR:** More it's to establish that
12 Mr. Pidgeon has any specific duties, vis-a-vis the
13 particular Administrator. That's the basis for my
14 objection. The lack of clarity as to his statement,
15 Mr. Malofiy's statements.

16 **HEARING OFFICER SULTANIK:** Mr. Malofiy, can
17 you rephrase the question as to what his role and what
18 his authority is with respect to this?

19 **BY MR. MALOFIY:**

20 **Q. If there's an unsafe situation at a school,**
21 **for whatever reason, what actions or what, if anything,**
22 **do you generally do to address that?**

23 A. Just in general, unsafe?

24 **MR. TAYLOR:** Object. That's way too broad.
25 Unsafe conditions as to what?

1 **accountable. He's not allowed back.**

2 **HEARING OFFICER SULTANIK:** Mr. Malofiy,
3 what are you reading from? Are you reading from the
4 document that you submitted, ASD School Board meeting?

5 **MR. MALOFIY:** Yes.

6 **HEARING OFFICER SULTANIK:** 2-11-21?

7 **MR. MALOFIY:** With the link above it.

8 **HEARING OFFICER SULTANIK:** Okay. And who
9 prepared this document?

10 **MR. MALOFIY:** I did.

11 **HEARING OFFICER SULTANIK:** And you prepared
12 it on --

13 **MR. MALOFIY:** Someone from my office did.

14 **HEARING OFFICER SULTANIK:** What?

15 **MR. MALOFIY:** Someone from my office did.

16 **HEARING OFFICER SULTANIK:** And your office
17 prepared this as the result of listening to the
18 Transcript of the Meeting?

19 **MR. MALOFIY:** That's correct.

20 **HEARING OFFICER SULTANIK:** Is this in the
21 Minutes of the School Board Meeting, which is, which is
22 under Law the only official Transcript?

23 **MR. MALOFIY:** Right. I know it's not an
24 official Transcript. I admit. That's why I put the
25 link that has the full meeting there. And I have the

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1 Minutes identified to make it easier. So that's as
2 best as I can give you.
3 **HEARING OFFICER SULTANIK:** Well, if you're
4 going to go through this process of what happened at
5 the Meeting, I think you need to show it to the witness
6 what you're looking at and what you're going through so
7 that the witness at least has an understanding of the
8 context of your questions.
9 **MR. MALOFIY:** My, it's not to show him a
10 document. It's more to refresh his recollection. Ask
11 him if he remembers this. Does he actually remember
12 this and what, if anything, was done to address this
13 concern?
14 **HEARING OFFICER SULTANIK:** Okay. And let
15 me just ask the question. Let's assume for a moment
16 that nothing was done by the District Administration
17 with respect to these issues.
18 **MR. MALOFIY:** Okay.
19 **HEARING OFFICER SULTANIK:** What does that
20 have to do with what I ultimately and the Board has to
21 rule upon with respect to the 1122 charge?
22 **MR. MALOFIY:** It's three things. One, is
23 it an unsafe environment for him?
24 Two, is it hostile?
25 Three, was there account built?

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1 Four, when they made the determination
2 after seven months that privately he did nothing wrong,
3 did they ever send an email to the community, the
4 Teachers, the Administration, and the students saying
5 this man did nothing wrong, and he wasn't part of those
6 riots?
7 And the answer is they did nothing
8 publicly. So what it is is that this whole Hearing is
9 pretextual because they don't want to be accountable or
10 even say I'm sorry for saying he was breaking into the
11 Capitol, when he wasn't.
12 And now the shifting goalpost is, let's
13 have him come back to an unsafe environment without
14 letting the community know what happened. We have the
15 theories of action there, and it says accountability
16 and it says safety. And I think that's the most
17 important thing as an HR Director, and for HR.
18 **MR. TAYLOR:** Our objection still stands.
19 He has a form. He has an outlet to pursue those
20 claims. There are lawsuits you can bring. He's filed
21 his Writ in State Court. He can file something in
22 Federal Court.
23 There is a mechanism for him to get
24 whatever justice he feels he's entitled to.
25 That form is not here today. Here today,

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1 this is just an employment decision. Did he report to
2 work as directed? He did not. His Counsel has
3 admitted four or fives times, we already have our
4 answer for why we're here today.
5 **HEARING OFFICER SULTANIK:** I just want to
6 mention one additional thing before I rule on your
7 objection.
8 First of all, to the extent that these are
9 members of the general public, under the circumstances,
10 how does that, from a causal connection, determine the
11 safety in the school buildings? That may go to the
12 safety of him in the, quote, unquote, community.
13 But you're saying that there is an unsafe
14 work environment in the District. And just because a
15 member of the general public says this does not
16 necessarily mean that safety is going to be impaired
17 for the employee in the school buildings.
18 I don't get the causal connection.
19 **MR. MALOFIY:** No. The causal connection is
20 the Superintendent's message on January 7th, which said
21 that he broke into and was part of, quote, involved in
22 the electoral college protest that took place at the
23 United States Capitol building on January 6th, 2021.
24 That's a false statement.
25 And that was determined to be a false

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1 statement seven months later after the investigation.
2 When the School District is the catalyst of
3 proliferating the false information, which then gets
4 spread to the community, infects the students, infects
5 the Teachers, infects groups to hate this man, and then
6 doesn't correct it. And still won't correct it
7 publicly, that is the concern.
8 The concern is that the initiation of a
9 false and defamatory and wrong information happened
10 from the Superintendent of the Administration.
11 And even though we've acknowledged
12 accountability and safety, they've been absolutely
13 absent from this process. And it's for that reason
14 that the community was misinformed about Mr. Moorehead.
15 It's for that reason that the children that he teaches
16 were misinformed about Mr. Moorehead.
17 And it's for the reason that every
18 relationship is built upon trust. Whether that's --
19 **HEARING OFFICER SULTANIK:** Okay, that's --
20 **MR. MALOFIY:** Hold on. Teacher and
21 student, Teacher and Administration, parent and
22 Teacher. And when that bond and that trust has been
23 irrevocably broken, and not even an attempt to fix or
24 address it. And poison the environment in such an
25 abusive and complete way to ruin a man's 17-year

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1 career, where he has done nothing wrong, choir boy, Boy
2 Scout, that's the concern here.
3 And so when we talk about, when we talk
4 about why the community is upset with this man, why are
5 people giving him death threats? It's because the
6 Administration allowed it to continue and you,
7 Mr. Pidgeon, allowed it to continue.
8 **HEARING OFFICER SULTANIK:** Mr. Malofiy, so
9 you are trying to establish a hostile work environment,
10 which typically doesn't apply to this instance, usually
11 for sexual harassment purposes, in this particular
12 matter, without your client ever going back to school
13 to experience it?
14 So you're raising a hypothetical hostile
15 work environment situation?
16 **MR. MALOFIY:** No, no, it's not hypothetical
17 when it's a continuing violation of his Fourth and
18 Fifth and 14th Constitutional Rights. All right?
19 And so when we have those violations
20 ongoing and continuing, that is the consideration and
21 concern?
22 You're asking the whole community to be
23 lied to. Lie to the community, lie to the Teachers,
24 let's just keep on promulgating this lie, proliferating
25 it throughout the whole community so his reputation is

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1 so destroyed and infected that he can do nothing,
2 right? That's the issue.
3 **HEARING OFFICER SULTANIK:** Let me just try
4 to expedite this issue.
5 Mr. Pidgeon, did you at any one of these
6 virtual Board Meetings, you personally, speak to
7 anything with respect to Mr. Moorehead or his actions
8 or your knowledge of the investigation?
9 **THE WITNESS:** I did not.
10 **HEARING OFFICER SULTANIK:** Okay. I think
11 that answers your question. He did not.
12 **MR. MALOFIY:** Thank you.
13 **HEARING OFFICER SULTANIK:** And he's the
14 only one that can testify to that.
15 **BY MR. MALOFIY:**
16 **Q. Was any efforts made to make a public**
17 **correction, yes or no?**
18 **MR. TAYLOR:** By whom?
19 **BY MR. MALOFIY:**
20 **Q. By the Administration, by Human Resources,**
21 **by anyone?**
22 **HEARING OFFICER SULTANIK:** He can testify
23 based upon what he knows.
24 **THE WITNESS:** Again, I was not involved
25 with the investigation. I don't know those outcomes.

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1 **BY MR. MALOFIY:**
2 **Q. I'm sorry, isn't it your letter, isn't it**
3 **your name that's signed to this document that says,**
4 **regarding after fully investigating your involvement.**
5 **That's what you wrote, correct, on Exhibit A?**
6 A. I did.
7 **Q. Right. So what, if anything, did you do,**
8 **as the HR Director, once you knew that there was a full**
9 **investigation, and he had no involvement in the events**
10 **of January 6th, at Washington, D.C.?**
11 A. I followed the directions of the
12 Superintendent and of our Legal Counsel.
13 **Q. Okay. So you did nothing, I'm not**
14 **asking --**
15 **HEARING OFFICER SULTANIK:** That's asked and
16 answered. He already testified to that already.
17 **MR. MALOFIY:** Hold on.
18 **BY MR. MALOFIY:**
19 **Q. You said of the Superintendent. Let's be**
20 **clear about the Administration, or the Office of**
21 **Superintendent.**
22 **Mr. Parker was the one who made the**
23 **statement from the Superintendent's message that placed**
24 **Mr. Moorehead at the U.S. Capitol building on January**
25 **6th, correct, that was Mr. Parker, correct?**

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1 **MR. TAYLOR:** What statement are you
2 referring to?
3 **MR. MALOFIY:** We can make this.
4 **MR. TAYLOR:** You have it in front of you.
5 **MR. MALOFIY:** Bates number 3 in our
6 Exhibits that we produced.
7 **THE WITNESS:** I don't have that in front.
8 **MR. MALOFIY:** It's Bates number 3 and 4 to
9 be specific. It's the message on January 6th.
10 **THE WITNESS:** I don't have that in front of
11 me.
12 **MR. MALOFIY:** Sorry, message on January
13 7th. Thank you for the correction.
14 **THE WITNESS:** I don't have that in front of
15 me. I'm not sure what you're referring to.
16 **MR. MALOFIY:** May I approach? You have it,
17 correct?
18 **MR. TAYLOR:** Yes.
19 **HEARING OFFICER SULTANIK:** What are you
20 referring to?
21 **MR. MALOFIY:** May I approach the witness?
22 I'm just going to give him the packet, make it a little
23 easier.
24 **HEARING OFFICER SULTANIK:** What is this
25 packet?

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1 **MR. MALOFIY:** That's just our Exhibits that
2 we used at the Loudermill. I don't think there's
3 anything else other than that, correct?
4 **HEARING OFFICER SULTANIK:** Do you have any
5 objection?
6 **MR. TAYLOR:** No. Assuming that is an
7 accurate packet of.
8 (Whereupon, a discussion was held off the
9 record.)
10 **HEARING OFFICER SULTANIK:** If you just want
11 to finish this question. But the Stenographer needs a
12 break.
13 **MR. MALOFIY:** Okay. These are the
14 documents. Just to be clear, and I'll show Mr. Taylor.
15 (Whereupon, a discussion was held off the
16 record.)
17 **MR. MALOFIY:** Do you mind if I use that for
18 the witness?
19 **HEARING OFFICER SULTANIK:** I don't. But
20 can't we just stipulate to the Collective Bargaining
21 Agreement and the Transcript of the Loudermill
22 proceeding?
23 **MR. MALOFIY:** Well, no. I don't want to
24 stipulate to anything. We agreed that they're going to
25 be part of the Exhibits in the first instance.

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1 **HEARING OFFICER SULTANIK:** Okay.
2 **MR. TAYLOR:** You can't stipulate that the
3 Loudermill occurred and we had a Court Reporter here
4 who took an accurate record?
5 **MR. MALOFIY:** I'm in the middle of Cross
6 Examination, and we're doing all this administrative
7 stuff.
8 **MR. TAYLOR:** No, he asked --
9 (Simultaneous indiscernible crosstalk
10 interrupted by the Court Reporter.)
11 **THE COURT REPORTER:** Mr. Malofiy, what
12 don't you understand? If he's making an objection, I
13 need to get it on the record. You're talking over him,
14 so I'm not getting the objection.
15 **MR. MALOFIY:** I understand that. The
16 problem is that I'm talking to the Hearing Officer, and
17 he's making an objection, which should totally not be
18 made at this point.
19 **MR. TAYLOR:** No, the Hearing Officer asked
20 about stipulations. I'm entitled to represent my
21 client in their position regarding stipulations.
22 **MR. MALOFIY:** Tell me when you're done.
23 **MR. TAYLOR:** No, I --
24 **MR. MALOFIY:** Tell me when you're done,
25 I'll sit down. Tell me when you're done, go ahead.

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1 **MR. TAYLOR:** You're stepping on it all day.
2 Go ahead.
3 **HEARING OFFICER SULTANIK:** Let's go on. He
4 said he's not stipulating to anything.
5 **MR. TAYLOR:** Okay.
6 **HEARING OFFICER SULTANIK:** So we'll just go
7 on.
8 Mr. Malofiy, ask a question of the witness.
9 **MR. MALOFIY:** I need that copy. I gave
10 Mr. -- do you mind if I use that one?
11 **MR. TAYLOR:** Here.
12 **MR. MALOFIY:** Thank you, Mr. Freund, I
13 appreciate that.
14 May I approach the witness?
15 **HEARING OFFICER SULTANIK:** Yes.
16 **BY MR. MALOFIY:**
17 **Q. Here you go.**
18 **A. Did you drop something?**
19 **Q. I did. I don't think it's important. Just**
20 **so you know I'm going to have to flip through, there's**
21 **Bates numbers at the bottom here. It's pretty much**
22 **like this. This might make it a little easier.**
23 **(Whereupon, a discussion was held off the**
24 **record.)**
25 **(Witness reviewing.)**

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1 **BY MR. MALOFIY:**
2 **Q. My question was as to this document and**
3 **Mr. Parker. I know you had indicated the Court**
4 **Reporter does need a break, and I do talk fast, I'm**
5 **sorry. Is that something we should do briefly?**
6 **Mr. Sultanik?**
7 **HEARING OFFICER SULTANIK:** How long are
8 your questions going to take, roughly?
9 **MR. MALOFIY:** I think I could -- how long?
10 Probably the whole evening, till 5:00, till we're out
11 of here. Yeah.
12 **HEARING OFFICER SULTANIK:** We're not going
13 to be here the whole evening. We're only going to be
14 here till 5:00.
15 **MR. MALOFIY:** We're scheduled till 5:00,
16 right?
17 **HEARING OFFICER SULTANIK:** Yes, till 5:00
18 o'clock. I don't view 5:00 as the evening.
19 **MR. MALOFIY:** I'll go all night.
20 **HEARING OFFICER SULTANIK:** You won't
21 because I have another engagement tonight.
22 **MR. MALOFIY:** You tell me what works for
23 you.
24 **HEARING OFFICER SULTANIK:** Well, so you're
25 going to be asking this witness for a long period of

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1 time more questions about his limited Direct
2 Examination, correct?
3 **MR. MALOFIY:** I think I can step through a
4 little quicker now that we established certain facts,
5 but yes. It will be some time.
6 **HEARING OFFICER SULTANIK:** We're going to
7 take a break for the Court Stenographer. You know,
8 let's break until, some of us may need sustenance, too.
9 Let's break until 3:25?
10 **MR. MALOFIY:** Okay.
11 **HEARING OFFICER SULTANIK:** Okay. So we can
12 get a quick bite to eat or something.
13 **THE WITNESS:** Just leave this here?
14 **HEARING OFFICER SULTANIK:** And get back
15 here as quickly as possible.
16 **THE WITNESS:** I just leave this stuff here?
17 **MR. MALOFIY:** We can leave our stuff right
18 here, right, Mr. Sultanik?
19 (Whereupon, a lunch recess was taken from
20 2:23 until 3:40 p.m.)
21 **HEARING OFFICER SULTANIK:** The light is
22 green.
23 **MR. MALOFIY:** Thank you, I appreciate the
24 recess.
25 **HEARING OFFICER SULTANIK:** So do I, by the

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1 way.
2 **BY MR. MALOFIY:**
3 **Q. We were discussing the letter from**
4 **Superintendent Parker, who has now resigned, of January**
5 **7, 2021.**
6 **Do you recall that, that line of**
7 **questioning?**
8 A. Yes.
9 **Q. Do you have it in front of you there, Bates**
10 **number 3 and Bates number 4?**
11 A. I have the Exhibit 1, which is the actual
12 letter. And I'm not sure what else you're looking for.
13 **Q. Just on the bottom here, I'm referring to**
14 **Bates numbers 3 and 4?**
15 A. Oh, yes, I'm sorry, yes.
16 **Q. It states here that this was issued on**
17 **January 7th, 2021, correct?**
18 A. Correct.
19 **Q. It says Superintendent's message, staff**
20 **involvement in January 6th protests. Do you see that?**
21 A. Which section are you looking at?
22 **Q. Oh, the heading in bold up here.**
23 A. Oh, yes, I do see that.
24 **Q. And it's coming from the Allentown School**
25 **District, correct?**

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1 A. Correct.
2 **Q. And that's coming from the Office of**
3 **Superintendent, correct?**
4 A. Correct.
5 **Q. It states here: Dear Allentown families,**
6 **Staff, and Community; is that correct?**
7 A. Yes.
8 **Q. So, there's no dispute that this went out**
9 **to these individuals, correct?**
10 A. It went out to the community. I'm not sure
11 specifically who.
12 **Q. Okay. It says here on January 7th, 2021**
13 **the Allentown School District was made aware of a staff**
14 **member who was involved in the Electoral College**
15 **protest that took place at the United States Capitol**
16 **building on January 6th, 2021, correct?**
17 A. Correct.
18 **Q. Now, after an investigation occurred, and**
19 **then you wrote a letter on July 16th, 2021, which has**
20 **already been put into the record, which you had**
21 **written, it says: After fully investigating your**
22 **involvement in the events of January 6th, 2021, in**
23 **Washington, D.C., the District has concluded that your**
24 **presence at the January 6th gathering did not violate**
25 **School Board Policy 419 relating to Teacher non-school**

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1 **activities; do you see that?**
2 A. Yes.
3 **Q. And you signed that, correct?**
4 A. Yes.
5 **Q. Now, at any point in time, did anyone from**
6 **the Administration, to your knowledge, publicly**
7 **acknowledge that Mr. Moorehead did not violate any**
8 **School Board policy in his involvement on January 6th?**
9 A. To my knowledge, no.
10 **Q. Just to be clear, I want to walk through**
11 **the Administration. Because you said that, you said**
12 **that certain files may reside with the Superintendent.**
13 **And it might be the responsibility of the**
14 **Superintendent to correct that.**
15 **I just want to walk through, Thomas Parker**
16 **was the Superintendent who wrote the letter to the**
17 **Allentown Families, Staff, and Community on January**
18 **7th, 2021, which you identified just a moment ago,**
19 **correct?**
20 A. His name is at the bottom of that letter,
21 yes.
22 **Q. And he's no longer at the school, correct?**
23 A. Correct.
24 **Q. Now, just to be clear, did you have any**
25 **conversations with him as to Mr. Moorehead's, as to the**

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1 **investigation related to Mr. Moorehead?**
2 A. In any, any time?
3 **Q. Um-hum.**
4 A. Actually, no, I don't think I did have any
5 conversations with Mr. Parker regarding the situation.
6 I was -- actually, I take that back. I did have one
7 conversation where he said that we were going to use
8 outside, our Counsel to do the investigation. And I'm
9 to stay away from it.
10 **Q. Okay.**
11 A. And I did.
12 **Q. So this was handled different than the**
13 **usual course in how Mr. Moorehead's case was handled?**
14 A. Say that again?
15 **Q. Would the investigation usually be done by**
16 **HR or by outside?**
17 A. Typically, depending on the scope of the
18 investigation, if it's just a normal, I know there's no
19 such thing as normal, but if it's just a normal
20 investigation, then HR handles it along with the
21 building Principals and whomever else.
22 If it's something of a larger scope, we
23 contract with somebody to provide, to do the
24 investigation for us.
25 **Q. Now, your -- when you were told this, that**

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1 **it would be handled outside, does that reside in his HR**
2 **file?**
3 A. Is what in his HR file?
4 **Q. That you were going to contract outside**
5 **people to do his investigation?**
6 A. No.
7 **Q. No? Did you look at his HR file?**
8 A. I did.
9 **Q. Is it here today?**
10 A. No, but the documents that were, the
11 documents that were not in the package, there are two.
12 One is the stopping of the pay, and another one is
13 an email to payroll talking to them about stopping of
14 pay.
15 And then the other, all the other documents
16 are already in the record.
17 **HEARING OFFICER SULTANIK:** Let the record
18 note that Counsel for the Administration provided the
19 Hearing Officer and Mr. Malofiy, looks like five
20 separate stapled documents. One is not stapled. But
21 there are five, looks like to be five separate
22 documents from August 9, 2021 letter from Anthony
23 Pidgeon to Jason Moorehead, regarding return to
24 teaching assignment.
25 A September 13, 2021 document to Jason

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1 Moorehead from Anthony Pidgeon, entitled Notice of
2 Loudermill Hearing, September 17, 2021.
3 And an email from Anthony Pidgeon to
4 Danielle Trevorah, T-R-E-V-O-R-A-H, T-R-E-V, as in
5 very, O as in out, R as in rabbit, A as in apple, H as
6 in high, Trevorah, who Mr. Pidgeon indicated was his
7 Secretary, or is his Secretary.
8 An October 7th, 2021 communication from
9 Anthony Pidgeon to Jason Moorehead.
10 And finally, an October 12, 2021 Statement
11 of Charges and Notice of Hearing issued to Jason
12 Moorehead.
13 I have no objection, unless the Counsel for
14 Mr. Moorehead does, to adding that to the record as
15 Administration Exhibit, we went through a whole bunch
16 of them.
17 **MR. TAYLOR:** We're through I.
18 **HEARING OFFICER SULTANIK:** J would that be?
19 **MR. TAYLOR:** I have it through I. So we
20 can add them collectively as J.
21 **HEARING OFFICER SULTANIK:** Collectively as
22 Exhibit J.
23 (Whereupon, the following Exhibit was
24 marked for identification as follows:
25 Exhibit J, August 9, 2021 letter from

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1 Anthony Pidgeon to Jason Moorehead; September 13, 2021
2 document to Jason Moorehead from Anthony Pidgeon,
3 entitled Notice of Loudermill Hearing; Email from
4 Anthony Pidgeon to Danielle Trevorah; October 7th, 2021
5 communication from Anthony Pidgeon to Jason Moorehead;
6 and an October 12, 2021 Statement of Charges and Notice
7 of Hearing.)
8 **HEARING OFFICER SULTANIK:** Any objection to
9 that?
10 **MR. MALOFIY:** No objection. Except to, I
11 will have some Cross on those documents, as well as I
12 don't know if we established -- well, I don't want the
13 record to reflect that this was all the documents in
14 his HR file, because I don't know if actually
15 Mr. Pidgeon went through the file himself, so I have
16 some questions in that regard.
17 **HEARING OFFICER SULTANIK:** I am going to
18 admit them into evidence, and you can certainly go to
19 the probative value if you have other information to
20 suggest otherwise. So I move them into evidence.
21 **BY MR. MALOFIY:**
22 **Q. Did you go to the physical location of the**
23 **file while we were on, I guess we can call it a late**
24 **lunch break?**
25 A. Yes, I did.

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1 **Q. And once you received that file, what, if**
2 **anything, did you do with it?**
3 A. The personnel file?
4 **Q. Yes.**
5 A. It's sitting in my office right now.
6 **Q. Did you have anyone else look at it before**
7 **you tendered the documents here?**
8 A. My Secretary made copies of the documents.
9 She was the only one else involved.
10 **Q. Did you actually go through the file and**
11 **pull out the documents that you thought were relevant**
12 **or that you thought were applicable to the request?**
13 A. I pulled out all the documents from January
14 5th through present.
15 **Q. And nothing was excluded?**
16 A. Nothing was excluded, to my knowledge.
17 **Q. Let me walk through the Administration**
18 **here. Thomas Parker, to your knowledge, never**
19 **corrected the statement that he made on January 7th, in**
20 **regards to Mr. Moorehead's involvement at the protest**
21 **that occurred at the Capitol building, correct?**
22 A. Well, again, this statement that's here,
23 OOO3, there's no mention of Mr. Moorehead in here. It
24 says a staff member.
25 **Q. Right. I understand what it says here.**

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1 **But I also understand that he put it out to the**
2 **community, which then he was blasted on community**
3 **boards and identified, all right.**
4 **So it was the false information promulgated**
5 **to the community which then put him on hit lists in**
6 **multiple hate groups in Lehigh County.**
7 **MR. TAYLOR:** Objection. That's not
8 clarifying a question, that's making a speech.
9 Mr. Pidgeon answered the question.
10 **MR. MALOFIY:** That wasn't my question.
11 **BY MR. MALOFIY:**
12 **Q. My question was, did he correct the**
13 **misstatement; yes or no?**
14 A. You said the misstatement towards
15 Mr. Moorehead. I'm saying Mr. Moorehead is not listed
16 in here.
17 **Q. Do you deny that this document is about**
18 **Mr. Moorehead?**
19 A. I'm saying that Mr. Moorehead is not listed
20 in here.
21 **Q. I'm asking you, who is this document**
22 **referring to, which staff member, you're the HR**
23 **Director, sir?**
24 A. I am the HR Director, I'm the Executive
25 Director of HR.

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1 **Q. Are you confused who this letter refers to?**
2 A. I'm saying there's no name listed in here.
3 **Q. That's not my question, sir.**
4 A. That's my answer.
5 **Q. You're sitting here today because you**
6 **accused Mr. Moorehead, which is identified here.**
7 **MR. TAYLOR:** Objection. He hasn't accused
8 Mr. Moorehead of anything.
9 **MR. MALOFIY:** Oh, no. He accused him --
10 wait a second. Let me clarify.
11 **BY MR. MALOFIY:**
12 **Q. You have a letter of July 16th, 2021,**
13 **correct?**
14 A. There's an objection.
15 **Q. I said let me clarify.**
16 **You have a letter here of July 16, 2021,**
17 **correct?**
18 A. July 16th, under the Exhibits that we
19 produced, yes.
20 **Q. Does it say Mr. Jason Moorehead there?**
21 A. It does.
22 **Q. Does it say regarding return to teaching**
23 **assignment?**
24 A. It does, a teaching assignment.
25 **Q. Does it say: Dear Mr. Moorehead?**

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1 A. Yes, it does.
2 **Q. After fully investigating your involvement**
3 **in the events of January 6th, 2021, in Washington, D.C.**
4 **Did you see that?**
5 A. Um-hum.
6 **Q. Did it refer to any other Teacher in the**
7 **Allentown School District that you are aware of?**
8 A. My letter, no, is directed toward
9 Mr. Moorehead. This letter is not directed toward
10 Mr. Moorehead, specifically.
11 **Q. No, it's directed to the Allentown**
12 **Families, Staff, and Community, correct?**
13 A. Yes.
14 **Q. Was there any other staff member that you**
15 **were made aware of that was, that was at the January**
16 **6th, in D.C.? Anyone else?**
17 A. I'm trying to think, you know, it's been
18 awhile. I think there were some others that were
19 brought up, but I don't think anything ever panned out.
20 **Q. Panned out, what does that mean, panned**
21 **out?**
22 A. Like there was no conclusion that they were
23 actually there.
24 **Q. When you were interrogating this man, there**
25 **was a laundry list of names, right?**

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1 A. Again, I did not interrogate.
2 **Q. Who questioned him?**
3 A. Mr. Freund.
4 **Q. Who provided him the names of the people**
5 **allegedly at the Capitol building protest and**
6 **insurrection; was it you, sir?**
7 A. No, you'd have to ask Mr. Freund who
8 provided him the names --
9 **Q. Do you remember --**
10 **HEARING OFFICER SULTANIK:** Would you let
11 him finish his answer?
12 **THE WITNESS:** I said you'd have to ask
13 Mr. Freund that answer.
14 **BY MR. MALOFIY:**
15 **Q. Do you remember there was a laundry list of**
16 **names that were asked of Mr. Moorehead on that, on that**
17 **interview, on January 8th?**
18 **MR. TAYLOR:** Objection. I don't think
19 there's any testimony about a laundry list of names.
20 **MR. MALOFIY:** He said Mr. Freund was asking
21 the questions.
22 **MR. TAYLOR:** I'm sorry, what's your
23 question?
24 **BY MR. MALOFIY:**
25 **Q. Sir, do you remember there was questions**

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1 relating to a number of individuals who were allegedly
2 at the Capitol building protest insurrection; do you
3 remember that?
4 A. Not specifically, no.
5 **Q. Did you provide any of the names that were**
6 **being posed to Mr. Moorehead about the Capitol building**
7 **protest?**
8 A. The only thing that I provided to
9 Mr. Freund on that day, and again, I don't recall
10 specifically, but I know his date, Mr. Moorehead's date
11 of hire, his position, so on and so forth. But nothing
12 in regards to the Capitol, or the, anything that
13 Mr. Moorehead had to do with that situation.
14 **Q. Okay. Let me ask you this.**
15 **Are you aware of Mr. Parker ever retracting**
16 **that statement?**
17 A. What statement?
18 **Q. The statement that a staff member was**
19 **involved at the Capitol building protest?**
20 A. No, I'm not aware of him retracting it.
21 **Q. Now, he resigned at some point, correct?**
22 A. Correct.
23 **Q. When was that?**
24 A. I believe his last day at the office was
25 May 1st.

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1 **Q. All right. Now, Lucretia Brown, she was**
2 **the Deputy Superintendent after Mr. Parker, correct?**
3 A. No.
4 **Q. Who was after Mr. Parker?**
5 A. Dr. Martinez.
6 **Q. Okay. The person who was before**
7 **Dr. Martinez was Interim Superintendent, wasn't it**
8 **Lucretia Brown, who was the Deputy Superintendent?**
9 A. No.
10 (Whereupon, a discussion was held off the
11 record.)
12 **MR. MALOFIY:** May I continue?
13 **HEARING OFFICER SULTANIK:** Yes, you may.
14 **BY MR. MALOFIY:**
15 **Q. Lucretia Brown, was she conducting the**
16 **meetings before Dr. Marilyn Martinez, the Board**
17 **meetings, before Marilyn Martinez became Interim**
18 **Superintendent?**
19 A. No.
20 **Q. No, not to your knowledge, okay. Fair**
21 **enough. I'll move forward.**
22 **Currently Lucretia Brown is the Deputy**
23 **Superintendent, but she resigned, correct?**
24 A. Correct.
25 **Q. So she's no longer there?**

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1 A. Correct.
2 **Q. When did she resign?**
3 A. Her resignation became effective the early
4 part of November.
5 **Q. Just recently, this year?**
6 A. Correct.
7 **Q. Now, Dr. Marilyn Martinez -- just to**
8 **tighten my questioning, you're not aware of the Deputy**
9 **Superintendent before she resigned correcting the**
10 **record in regards to this January 7th, 2021 press**
11 **release?**
12 A. Which Deputy Superintendent?
13 **Q. Lucretia Brown?**
14 A. No, I'm not aware of that.
15 **Q. Now, Dr. Marilyn Martinez, she also**
16 **resigned, correct?**
17 A. Yes.
18 **Q. And she was Interim Superintendent,**
19 **correct?**
20 A. Correct.
21 **Q. Are you aware of her correcting the**
22 **misstatement regarding Mr. Moorehead?**
23 A. Again, I don't know what statement was
24 directed towards Mr. Moorehead. Just this one
25 statement from Mr. Parker. Which has not identified a

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1 staff member.
2 **Q. Yeah, okay. Are you confused that this,**
3 **whether or not this letter is about Mr. Moorehead? Are**
4 **you confused as you sit here today?**
5 A. You've already asked me that, and I've
6 already answered you.
7 **Q. You're confused?**
8 **MR. TAYLOR:** Objection.
9 **HEARING OFFICER SULTANIK:** Please stop
10 fighting with the witness. It's in the record already,
11 and we'll make a finding on that issue.
12 **BY MR. MALOFIY:**
13 **Q. When the FBI, when you heard about the FBI**
14 **inquiring, or rumored, or talks, or hearsay about**
15 **Mr. Moorehead, did that clarify who this letter was**
16 **about, of January 7th?**
17 A. Again, I don't see any reference to the FBI
18 in that letter.
19 **Q. Right. But you knew of the FBI, you heard**
20 **about it?**
21 A. I heard about it way after the fact.
22 Again.
23 **Q. When?**
24 A. I told you I don't know specifically. It
25 was after the fact, though.

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1 **Q. Dr. Marilyn Martinez, at no point in time**
2 **did she correct the false misinformation about**
3 **Mr. Moorehead, correct?**
4 A. Correct.
5 **Q. Now, let me go to Jennifer Ramos, Deputy**
6 **Superintendent. She's currently, she was the acting**
7 **Superintendent for a time, correct?**
8 A. Correct.
9 **Q. Do you have any knowledge of her correcting**
10 **the false statements about Mr. Moorehead?**
11 A. Again, I don't know of any false statements
12 specifically directed at Mr. Moorehead. But I don't
13 also recall Ms. Ramos correcting anything in that
14 regards.
15 **Q. Okay. She's currently still with the**
16 **school, correct?**
17 A. Yes, she's sitting right back here.
18 **Q. The Administration. She's in the back**
19 **there?**
20 **Now, when did Dr. Marilyn Martinez resign;**
21 **do you know?**
22 A. I believe it was late July, August, I'm not
23 sure specifically.
24 **Q. Okay. Were these all resignations, or were**
25 **they terminations of some sort?**

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1 **MR. TAYLOR:** Objection. I don't think
2 that's relevant. The reason why these Administrators
3 left.
4 (Reporter requested clarification.)
5 **MR. TAYLOR:** It's not relevant, the reason
6 why these Administrators left.
7 **HEARING OFFICER SULTANIK:** You can ask the
8 witness the question to the extent. I don't think it's
9 relevant, but you can ask him the question.
10 **THE WITNESS:** They all resigned.
11 **BY MR. MALOFIY:**
12 **Q. Did it have anything to do with**
13 **Mr. Moorehead's matter or the investigation or the FBI**
14 **involvement?**
15 **MR. TAYLOR:** Same objection. You can
16 answer.
17 **THE WITNESS:** You'd have to ask them, I
18 don't know why they resigned specifically. It just
19 said personal reasons in the Board Agenda. In the
20 letters I got, that's all it had.
21 **BY MR. MALOFIY:**
22 **Q. Okay. Now, the current Superintendent, the**
23 **new Superintendent is Dr. John Stanford, correct?**
24 A. Correct.
25 **Q. When did he come in?**

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1 A. November 15th.
2 **Q. Did he correct any of the false information**
3 **about Mr. Moorehead?**
4 A. To my knowledge, no.
5 **Q. And you'd agree with me that there's**
6 **never been a public email sent to the community, the**
7 **Allentown families, or staff, or students, that in fact**
8 **Mr. Moorehead did not violate any School Board policy**
9 **when he was at the events of January 6th, 2021, in**
10 **Washington, D.C., correct?**
11 A. To my knowledge, no.
12 **Q. If one of the paramount tenets of the**
13 **Allentown School District is account built and safety;**
14 **why wasn't that done?**
15 **MR. TAYLOR:** Objection. I don't know what
16 kind of question that is.
17 (Reporter requested clarification.)
18 **MR. TAYLOR:** That question, I can't even
19 make sense of that question. You asked him about the
20 core values of the School District and why wasn't it
21 done? He says he doesn't know, it wasn't done.
22 **HEARING OFFICER SULTANIK:** I'm going to
23 sustain the objection.
24 **BY MR. MALOFIY:**
25 **Q. Let me -- I'll ask you generally, if it's**

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1 objected to, I can go through each of these
2 Superintendents or Acting Superintendents, which I just
3 identified.
4 Did you have any communications with any of
5 the individuals I just mentioned, Parker, Brown,
6 Martinez, Ramos, or Stanford, in regard to the
7 investigation to Mr. Moorehead?
8 A. Specifically, no, not really.
9 Q. How unspecifically did you have
10 communications with him regarding Mr. Moorehead's
11 investigation?
12 A. We would have, we would receive emails from
13 Mr. Freund. And then he just was sending them to me
14 for a record. But we never had conversations about
15 them.
16 It would --
17 Q. Where were the emails --
18 (Reporter requested clarification.)
19 A. I said it was just a record for the, from,
20 you know, the file, or not the personnel file, just the
21 file on this situation. And we would just, you know,
22 somebody would say to me did you receive the email?
23 That was the extent of the conversation.
24 Q. Did you see the email, right? Where does
25 the file exist, if there's a file on this Mr. Moorehead

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1 issue? That you had to make sure you received it;
2 where is that file?
3 A. The emails from our Attorneys?
4 Q. Yes?
5 A. They're in my office.
6 Q. Are they part of his file?
7 A. His personnel file?
8 Q. Yes.
9 A. No.
10 Q. What file are they part of?
11 A. They're a file in my office.
12 Q. What's it called?
13 A. Moorehead.
14 Q. Okay. So there's two Moorehead files, one
15 is the HR file for Mr. Moorehead that you maintained.
16 A. There's an official personnel file for
17 Mr. Moorehead as there is on every employee. Then I
18 have separate files on many employees for specific
19 situations, as we're determining outcomes.
20 Q. How many additional files do you have on
21 Mr. Moorehead other than the official file for
22 personnel?
23 A. I have the file that the Attorneys have
24 provided me that information. That's all.
25 Q. So, there's one additional file?

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1 A. Well, again, it's not even in a file, it's
2 in a binder.
3 Q. What kind of binder?
4 A. A big one.
5 Q. Is it in a banker box, is it in a red
6 wells, is it in a file folder, what kind?
7 A. It's in a binder in my desk.
8 Q. It's on your desk?
9 A. In my desk.
10 HEARING OFFICER SULTANIK: Is this a
11 privileged, an Attorney/client privileged document in
12 terms of communications?
13 MR. FREUND: Absolutely.
14 HEARING OFFICER SULTANIK: Mr. Taylor?
15 MR. TAYLOR: Yes, it is.
16 HEARING OFFICER SULTANIK: Where are we
17 going with this, Mr. Malofiy? Do you want to look at a
18 privileged file?
19 MR. MALOFIY: A privileged log.
20 Here is the issue. One, now we learned
21 that there's two files, one that's in Mr. -- where is
22 this, let me get some clarification.
23 BY MR. MALOFIY:
24 Q. Is Mr. Moorehead's official personnel file;
25 where is that?

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1 A. I already told you that. It's in my
2 office.
3 Q. I know, but where?
4 A. On my desk.
5 Q. So his personnel file is on your desk, but
6 it's normally not on your desk, right?
7 A. Correct.
8 Q. Where is it normally?
9 A. It's in the file room.
10 Q. And you have a separate file that you said
11 isn't in your desk?
12 A. I said I have a binder that is in my desk.
13 Q. In your desk, correct?
14 A. Um-hum.
15 Q. How big is your desk to have separate files
16 for Teachers?
17 A. I don't have it for every Teacher, I just
18 have it for certain ones.
19 HEARING OFFICER SULTANIK: Mr. Malofiy,
20 where is this headed? We're going to be here for 20
21 years at this rate.
22 MR. MALOFIY: Well, we were here for 12
23 months just to get here, and it took seven months to do
24 an investigation with the FBI. I don't think a couple
25 hours of questioning is not too bad.

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1 **HEARING OFFICER SULTANIK:** But when they're
2 relevant, it helps.
3 **MR. MALOFIY:** Well, if that file has FBI
4 communications and FBI recommendations that this man
5 did nothing wrong, and inquiries from the
6 Superintendent, asking them to find dirt on this man,
7 and asking them to do the investigation on his
8 electronic devices, which we all know they did, that
9 would be relevant.
10 **MR. TAYLOR:** Objection. I think he's
11 already testified that he has nothing from the FBI, no
12 written reports or documents. He said that about two
13 hours ago.
14 **MR. MALOFIY:** No, no, no. We just
15 identified another file. One that you want to keep
16 privileged.
17 **MR. TAYLOR:** No, he testified, he testified
18 there were no FBI documents or reports in this file.
19 **MR. MALOFIY:** No, there's two files we're
20 talking about now.
21 **MR. TAYLOR:** He says he has no Reports from
22 the FBI.
23 **MR. MALOFIY:** No, you're misconstruing what
24 was just testified to. It was very clear, Mr. Taylor.
25 **MR. TAYLOR:** You're misconstruing, you're

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1 fighting with the witness.
2 **MR. MALOFIY:** I understand you don't
3 like --
4 **MR. TAYLOR:** I don't like any lies.
5 **MR. MALOFIY:** I don't lie, and don't put
6 those kinds of words in my mouth. You don't even
7 follow the Constitution, nor do you know what the
8 actual First, Second --
9 **HEARING OFFICER SULTANIK:** Stop this right
10 now, both of you. Right now, we're done on this issue.
11 Where are you headed in trying to figure
12 out where in his desk is he putting this file? I'm
13 trying to, I'm struggling to find that there's some
14 relevancy to where in his desk.
15 We understand that there was a privileged
16 file, and there was the official personnel file.
17 That's what I heard testimony on.
18 **MR. MALOFIY:** Yes. And there's the one
19 file that's in Mr. Pidgeon's desk, which is apparently
20 privileged, which we don't know what exists. The
21 reason is that he's been treated separate and apart
22 from everybody else, and he's been treated differently.
23 And now Mr. Pidgeon is pretending that he
24 doesn't know even what this letter was about.
25 **MR. TAYLOR:** Objection. This is speech

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1 making, this isn't asking questions.
2 **HEARING OFFICER SULTANIK:** I agree. I
3 agree. The objection is sustained.
4 **BY MR. MALOFIY:**
5 **Q. When was the last time you looked at the**
6 **file in your desk pertaining to Mr. Moorehead?**
7 A. The binder?
8 **Q. Yeah.**
9 A. This morning.
10 **Q. Does that binder identify any**
11 **communications or reference any investigation that was**
12 **done in concert with the FBI?**
13 A. Not to my knowledge.
14 **Q. Just to be clear, you said that you were**
15 **asked whether or not you received the documents before**
16 **you put in the file that you were asked to confirm that**
17 **you received, there was emails that were sent out,**
18 **correct?**
19 A. Um-hum.
20 (Reporter requested clarification.)
21 A. Yes.
22 **Q. Who else was identified on those emails?**
23 A. I don't recall.
24 **Q. But you could figure that out? It was more**
25 **than you, right?**

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1 A. I don't remember if it was just me, or it
2 was more. I truly don't remember.
3 **Q. Were you the only person that the Attorneys**
4 **were communicating with, or was there other people**
5 **involved?**
6 A. You'd have to ask the Attorneys that.
7 **Q. I'm asking you?**
8 A. I don't know who else they were
9 communicating with.
10 **Q. Based on your file, when you were being**
11 **asked certain things, that special file that's in your**
12 **desk?**
13 A. I just told you I don't remember who was on
14 it, if it was just me or it was more people. I truly
15 don't remember. I didn't look at who it was copied to,
16 if anyone.
17 **Q. Let me, let me, I'm going to try to move**
18 **through this and get this from some of the documents**
19 **quickly.**
20 **Did Mr. Parker ever tell you the FBI was**
21 **involved in the investigation of Mr. Moorehead, yes or**
22 **no?**
23 A. I don't believe so.
24 **Q. Did Lucretia Brown ever tell you that the**
25 **FBI was involved in the investigation of Mr. Moorehead,**

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1 **yes or no?**
2 A. I don't believe so.
3 **Q. Did Marilyn Martinez ever tell you that the**
4 **FBI was involved in the investigation of Mr. Moorehead;**
5 **yes or no?**
6 A. That one's a no. I didn't have any
7 conversations with Ms. Martinez regarding this.
8 **Q. Did Jennifer Ramos ever tell you that the**
9 **FBI was involved in the investigation of Mr. Moorehead,**
10 **yes or no?**
11 A. Ms. Ramos might have said something.
12 Again, I can't be specific. But she, there are three
13 or four people who might have said something.
14 Ms. Ramos would have been one of them.
15 **Q. Who were the other people, you said three**
16 **or four?**
17 A. The Attorneys, so there would have been
18 three.
19 **Q. So it was Ms. Ramos or who else?**
20 A. Mr. Freund, Mr. Taylor.
21 **Q. Anyone else?**
22 A. Off the top of my head, no.
23 **Q. Since the meetings of July, was there**
24 **anything discussed about Mr. Moorehead and his**
25 **investigation, meetings, the Board meetings, and things**

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1 **of that nature?**
2 **MR. TAYLOR:** Objection. When at Board
3 meetings?
4 **MR. MALOFIY:** Yes.
5 **MR. TAYLOR:** Was an investigation discussed
6 at Board meetings?
7 **MR. MALOFIY:** Yes.
8 **MR. TAYLOR:** Public Board meetings?
9 **MR. MALOFIY:** Public, private, executive
10 session, any?
11 **THE WITNESS:** I don't know the answer to
12 that. Not with me.
13 **BY MR. MALOFIY:**
14 **Q. Is there a copy of the executive session**
15 **and private sessions of the Board?**
16 A. I don't know the answer to that.
17 **HEARING OFFICER SULTANIK:** I don't believe
18 the Board maintains Minutes of the executive sessions,
19 no Board does.
20 **BY MR. MALOFIY:**
21 **Q. Is there an agenda?**
22 **HEARING OFFICER SULTANIK:** Not an official
23 written agenda typically for the executive sessions.
24 **MR. MALOFIY:** How do you, Mr. -- and I
25 don't mean to ask you questions, because I know you're

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1 not testifying, but when you sit down for an executive
2 meeting or an executive session, what do they do, they
3 say come together for what, is there an agenda, things
4 on a list, is there a punch list?
5 **THE WITNESS:** Most of the times I'm not
6 invited to the executive sessions.
7 **BY MR. MALOFIY:**
8 **Q. Who is?**
9 A. The Board, Superintendent, Deputy
10 Superintendents.
11 **Q. Okay. Dr. John Stanford, did he ever share**
12 **with you that the FBI was involved in the investigation**
13 **of Mr. Moorehead?**
14 A. No, he never shared with me.
15 **Q. Has he been made aware of Mr. Moorehead's**
16 **situation, yes or no?**
17 A. I have not had any conversations with
18 Dr. Stanford regarding Mr. Moorehead. I don't know if
19 anybody else has.
20 **Q. Were you aware that the FBI initially came**
21 **to the Board of Directors to inquire and investigate**
22 **Mr. Moorehead because of the letter that went out by**
23 **the Superintendent?**
24 **MR. TAYLOR:** Objection.
25 **HEARING OFFICER SULTANIK:** Mr. Malofiy, if

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1 this is continuing a discussion regarding the FBI
2 issue, I believe Mr. Pidgeon has indicated very limited
3 knowledge, only hearsay, about FBI involvement. If I
4 heard his testimony correctly.
5 I don't know, again, I know you may not be
6 happy with what he's answering, but I think you have
7 the right to establish that in your rebuttal case
8 versus trying to establish it from a witness who has
9 said innumerable times that he only has hearsay
10 information about what might have been an FBI
11 investigation and no direct knowledge.
12 **MR. MALOFIY:** Well, I think there's more to
13 it than that. And I think this is the first time in
14 twelve months we're getting testimony on the record,
15 which is nice.
16 More importantly, our Subpoena to the FBI
17 was objected to.
18 **HEARING OFFICER SULTANIK:** I understand
19 that. But you're trying to elicit this from a witness
20 who has only indicated peripheral knowledge of the
21 situation. No direct knowledge. You have the right,
22 you have the right to present the evidence in a
23 different fashion.
24 **MR. MALOFIY:** I also have a right to cross
25 examine. And I appreciate, I appreciate the Hearing

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1 Officer's concerns.
2 I already addressed the Administration, so
3 I'm passed that. I want to just focus on the Board of
4 Directors. I know, it's pretty much the same line of
5 questioning. I just want to make sure that if there
6 was any communications with them.
7 **MR. TAYLOR:** I'm going to object. He says
8 he has no knowledge about the FBI investigation.
9 Again --
10 **MR. MALOFIY:** That's not what he said.
11 That's not what he said.
12 **MR. TAYLOR:** He was not involved. He did
13 not receive a Report from the FBI. He said he did not
14 speak to them. Again, this is a discovery expedition
15 that you're using for your future lawsuit.
16 **MR. MALOFIY:** Are you going to waive your
17 Attorney/client privilege and your firm's
18 Attorney/client privilege?
19 **MR. TAYLOR:** Absolutely not.
20 **MR. MALOFIY:** Okay. Then allow me to
21 question the witness.
22 **MR. TAYLOR:** No, I'm not going to allow you
23 to question the witness when if I feel the question is
24 out of bounds or irrelevant.
25 **HEARING OFFICER SULTANIK:** Mr. Malofiy, if

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1 you're going to go, from what I understand, you're
2 going to go down now the line of questioning as to what
3 the Board knew versus the Administration, because you
4 went through all the Administrators.
5 **MR. MALOFIY:** It goes directly to bias. It
6 also --
7 **HEARING OFFICER SULTANIK:** Yes, I
8 understand. But you heard from the witness that he
9 does not regularly attend executive sessions with the
10 Board.
11 So he may not be the right person to elicit
12 this information if that's what you're trying to do.
13 So if you can establish a foundation of his knowledge
14 with the Board, it would be helpful.
15 **BY MR. MALOFIY:**
16 **Q. Sir, do you know who Nancy Wilt is?**
17 A. Yes, I do.
18 **Q. Who is she?**
19 A. She's our Board President.
20 **Q. Have you ever had any interactions with the**
21 **Allentown School District School Board, at all?**
22 A. What do you mean interactions?
23 **Q. I don't know. Do you go to the Board**
24 **meetings ever?**
25 A. I do go to every Board meeting.

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1 **Q. Good, I thought so.**
2 A. I sit right over there.
3 **Q. I just want to make sure that I wasn't**
4 **confused whether or not you were involved in these**
5 **Board Meetings, but thank you for clarifying that.**
6 **You just identified Ms. Ramos as you having**
7 **some recollection of identifying the FBI involvement in**
8 **the investigation of Mr. Moorehead. I'm going to**
9 **simply go through the same questioning so there's no**
10 **tricks here, I'm telling you what I'm doing.**
11 **Do you recall whether or not Nancy Wilt --**
12 A. I can save you some time. I had no
13 conversation with the Board about FBI or any other,
14 Mr. Moorehead, at all.
15 **Q. So, if I would go through these names, I'm**
16 **just going to put them on the record. Nancy Wilt,**
17 **Nicholas Miller, Lisa Conover, Phoebe Harris, Sara**
18 **Brace, Audrey Mathison, Charles F. Thiel, T-H-I-E-L,**
19 **Linda Vega, Cheryl Johnson-Watts, who I believe has**
20 **resigned now.**
21 **Your testimony would be that you did not**
22 **have any communications or conversations with them in**
23 **regards to the FBI's involvement with the investigation**
24 **of Mr. Moorehead, correct?**
25 A. Correct.

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1 **Q. Did you have any communications or**
2 **discussions with Mr. Leibold, Mark Leibold, the**
3 **President of the Allentown Education Association, in**
4 **regards to FBI investigation of Mr. Moorehead, yes or**
5 **no?**
6 A. I don't believe so, no.
7 **Q. At any point in time were you made aware**
8 **that the FBI had first responded to a letter to the**
9 **Allentown family, staff, and community of January 7th**
10 **and then reached out to the School Board, were you ever**
11 **made aware of that fact?**
12 **MR. TAYLOR:** Objection, there's no evidence
13 of that.
14 **BY MR. MALOFIY:**
15 **Q. Well, do you have any information regarding**
16 **that?**
17 A. No.
18 **Q. At that point in time, were you ever made**
19 **aware that Mr. Moorehead was then questioned with the**
20 **assistance and the help of the FBI when he was**
21 **questioned the day after that letter came out, on**
22 **January 8th?**
23 A. Say that again?
24 **Q. The meeting you had, were you ever told**
25 **that it was in conjunction, in concert, with an**

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1 investigation with the FBI, and they were involved in
2 the questioning of Mr. Moorehead?
3 A. I don't believe that's true, at all.
4 **Q. Okay. Let me move forward.**
5 **Were you ever made aware that the actual**
6 **investigation of his personal devices, including his**
7 **laptops and other devices, were done with the help of**
8 **the FBI, yes or no?**
9 A. I think I've already answered that.
10 **MR. TAYLOR:** Objection. There's been no
11 evidence of that.
12 **MR. MALOFIY:** I'm asking whether -- it's
13 Cross Examination. I'm not establishing it as a fact.
14 **HEARING OFFICER SULTANIK:** What's your
15 objection, Mr. Taylor?
16 **MR. TAYLOR:** There's been no evidence of
17 this. He's throwing out hypotheticals.
18 **HEARING OFFICER SULTANIK:** Even without the
19 hypotheticals, the witness has said too many times that
20 he doesn't have direct knowledge regarding the FBI
21 investigation. I don't know how many times you're
22 going to try to ask the question.
23 **MR. MALOFIY:** I'll move forward.
24 **HEARING OFFICER SULTANIK:** Please, thank
25 you.

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1 **BY MR. MALOFIY:**
2 **Q. Your letter of July 16th, 2021, it**
3 **identifies a number of things. Here, one, two and I**
4 **think three and four. It says: You will be required**
5 **to undergo training in cultural competencies related to**
6 **the history of African-Americans and Hispanics in the**
7 **United States history; do you see that?**
8 A. Yes, I do.
9 **Q. Why? Why was that listed there?**
10 A. That was a requirement that the Solicitor's
11 Office had asked me to put into the letter.
12 **Q. So, that wasn't your idea?**
13 A. That was not my idea.
14 **Q. Was that the idea of your office?**
15 A. I just told you who told me to put it in.
16 **Q. I understand they told you to put it in. I**
17 **want to know if it was in conjunction with your office**
18 **in any way, shape, or form?**
19 A. No.
20 **HEARING OFFICER SULTANIK:** When you said
21 the Solicitor's Office, you were talking about King,
22 Spry?
23 **THE WITNESS:** Correct.
24 **HEARING OFFICER SULTANIK:** For the record?
25 **THE WITNESS:** Correct.

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1 **BY MR. MALOFIY:**
2 **Q. Who specifically told you to put this in?**
3 **MR. TAYLOR:** Objection. To this extent, I
4 think we may be heading down the line of Attorney-
5 client privilege.
6 **MR. MALOFIY:** It's in a letter.
7 **HEARING OFFICER SULTANIK:** If it's coming
8 from the Solicitor's Office, I will sustain the
9 objection. And does it matter? Because it's in the
10 letter.
11 **MR. MALOFIY:** We believe it matters --
12 **HEARING OFFICER SULTANIK:** The letter
13 speaks for itself. It does say that.
14 **BY MR. MALOFIY:**
15 **Q. You do recall that Mr. Moorehead was very**
16 **clear that he's not going to accept these conditions,**
17 **because he did nothing wrong, and he's never had any**
18 **issues with the African American or Hispanic community,**
19 **and nor does he have any discipline in his record of 17**
20 **years in regards to that issue, correct?**
21 A. He does not have any discipline in his
22 record. The other part, I don't know what to answer
23 that. You'd have to ask Mr. Moorehead that.
24 **HEARING OFFICER SULTANIK:** Just for my
25 edification, was there a particular course that you

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1 were, you had in mind, and what would have been
2 involved in that course?
3 **THE WITNESS:** I did not have a course in
4 mind because, again, that was not my edict, so to
5 speak, or requirement. So that was something we'd find
6 a course and work at that capacity at that point, if
7 and when Mr. Moorehead returned.
8 **HEARING OFFICER SULTANIK:** To your
9 knowledge, did Mr. Moorehead question what specific
10 course, whether it be a 30-minute YouTube course, or a
11 six-month college course on the subject? Was there
12 ever any discussion to the best of your knowledge with
13 Mr. Moorehead on that issue?
14 **THE WITNESS:** There was no discussion. The
15 only discussion or the only comments I have is the
16 email from Mr. Moorehead.
17 **HEARING OFFICER SULTANIK:** Thank you.
18 **BY MR. MALOFIY:**
19 **Q. If we go to the next, if we go to the**
20 **Exhibit here B. These are your Exhibits, believe it or**
21 **not.**
22 A. Okay.
23 **Q. Do you have them there?**
24 A. Yes.
25 **Q. I'm just going to step through them. So no**

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1 tricks here.
2 A. You said B?
3 **Q. Yes. You see it there?**
4 A. Yes.
5 **Q. It says July 30th, 2021, correct?**
6 A. Correct.
7 **Q. It says response to letter reinstating**
8 **Jason Moorehead. Do you see that in the regarding**
9 **caption?**
10 A. Yes.
11 **Q. Dear Mr. Freund, as we discussed on the**
12 **phone, Mr. Moorehead is rejecting the District's**
13 **proposal. The proposal does nothing to correct the**
14 **false information that was disseminated about him.**
15 **Furthermore, he was falsely labeled a**
16 **racist, a bigot, and an insurrectionist. He's not**
17 **going to be forced to take diversity training classes**
18 **if he did something wrong. Should be nothing, excuse**
19 **me. Excuse me, I read that wrong. He's not going to**
20 **be forced to take diversity training classes as if he**
21 **did something wrong.**
22 **The truth is that the District has made it**
23 **impossible for Mr. Moorehead to return to the School**
24 **District. He'd be returning to the most hostile**
25 **working environment imaginable in the political, in the**

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1 **current political climate. Do you see that?**
2 A. Yes, I do.
3 **Q. What, if anything, after receiving this**
4 **letter, did you do to consider or address the safety**
5 **concern within the school?**
6 A. I didn't receive this. Mr. Freund did.
7 **Q. Did you ever read this?**
8 A. Yes.
9 **Q. What did -- are you aware of this letter**
10 **before you sit here today?**
11 A. Yes.
12 **Q. So, as the HR Executive Director, what, if**
13 **anything, did you do after Mr. Moorehead made it clear**
14 **that there's a hostile work environment, he's concerned**
15 **about his safety because of the false information**
16 **that's been disseminated for months, and months, and**
17 **months?**
18 A. I sent a second letter to Mr. Moorehead
19 because I still hadn't heard from him. We only heard
20 from you on this matter.
21 **Q. You understand I'm his Counsel, correct?**
22 A. I do understand that.
23 **Q. Did you understand that as his Counsel --**
24 A. You asked me what I did, I'm responding to
25 you.

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1 **Q. Do you understand that the Law requires you**
2 **to respond to me once I represent a client?**
3 **MR. TAYLOR:** Objection. That's not true.
4 Mr. Malofiy is speaking of an obligation of an Attorney
5 dealing with a client of another individual.
6 Here Mr. Pidgeon was his employer. There's
7 no Law that says an employer cannot contact his
8 employee in this situation.
9 It would be different if Mr. Freund had
10 reached out. Then he's obligated to go through
11 Mr. Malofiy. That's not the situation here. Those
12 Rules, those canons of ethics do not apply in this
13 situation.
14 **MR. MALOFIY:** I'm not going to argue with
15 you here on that issue. We can just agree. And we
16 have done this in the prior Hearing. So we've gone
17 back and forth on this issue. I'm not going to beat a
18 dead horse.
19 **BY MR. MALOFIY:**
20 **Q. You'd agree with me that even though I**
21 **asked you to communicate with me as his Attorney that**
22 **you did not do that at any stage of the game, correct?**
23 **I just want to make sure that's clear?**
24 A. I followed our Attorney's, my Attorney's
25 recommendations and directives.

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1 **Q. Just to be clear, when I asked you to**
2 **communicate with me as Mr. Moorehead's Attorney, you**
3 **refused to do that and you never did that at any stage;**
4 **isn't that true?**
5 **MR. TAYLOR:** Objection.
6 **HEARING OFFICER SULTANIK:** That's fine.
7 But I got to tell you I can't place any weight in the
8 proceeding on that issue.
9 **MR. MALOFIY:** I understand.
10 **HEARING OFFICER SULTANIK:** The
11 Administration was represented by Counsel, you could
12 have had the interaction with Counsel. And you're
13 putting into evidence a communication that you had with
14 Counsel regarding the status of what was offered or
15 directed to Mr. Moorehead, under the circumstances.
16 **MR. MALOFIY:** I just want to make sure
17 factually it's established, not, not to question
18 whether or not he's following his Counsel's
19 instruction.
20 **BY MR. MALOFIY:**
21 **Q. Just to be clear, you never communicated to**
22 **me even after my request that you address all letters**
23 **to me, correct?**
24 A. I followed our Counsel's directions.
25 **MR. TAYLOR:** The letter speaks for

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1 themselves. The office or the letters. They're at the
2 bottom of the letters.
3 **BY MR. MALOFIY:**
4 **Q. Now to be clear after receiving this letter**
5 **and after understanding the concern that Mr. Moorehead**
6 **had in regards to account built , correcting the**
7 **record, and his safety, what, if anything, did you do,**
8 **or what if anything did anyone do, or was there any**
9 **communication about addressing that concern of**
10 **Mr. Moorehead?**
11 A. So what our intent was when we sent the
12 initial letter was to have a conversation with
13 Mr. Moorehead to see where we could place him. Because
14 the initial letter said a teaching position, not his
15 previous teaching position.
16 We realized there might have been some
17 challenges with that. So I planned on having a
18 conversation with Mr. Moorehead to get his input onto
19 where he would feel comfortable and use his
20 Certification within the District.
21 We never had that opportunity because we
22 didn't have any conversations with Mr. Moorehead.
23 All's we had was your letter and then an email from
24 Mr. Moorehead.
25 **Q. Right. In Mr. Moorehead's letter he said,**

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1 **and we have it as Exhibit D. Do you have it there?**
2 A. Yes.
3 **Q. August 16, 2021, correct?**
4 A. Correct.
5 **Q. He says: Dear Mr. Pidgeon, and this is a**
6 **letter from Mr. Moorehead, correct?**
7 A. His name is not on here, but yes, it is
8 from Mr. Moorehead. It's at the end.
9 **Q. It says Jason Moorehead?**
10 A. At the end, yes, yes.
11 **Q. There's no way I can return to the**
12 **Allentown School District, given the way the District**
13 **has publicly vilified and defamed me, poisoned the**
14 **community against me, put me and my family's safety in**
15 **jeopardy, and never corrected the record. Did you see**
16 **that?**
17 A. I do see that.
18 **Q. After you received this letter, what if**
19 **anything did you do to address that concern of**
20 **Mr. Moorehead?**
21 A. Again, as I already stated, we planned on
22 having a conversation with Mr. Moorehead, but it never
23 got to that level.
24 **Q. Did you read this letter?**
25 A. I did.

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1 **Q. Do you think it's fair that the**
2 **Administration, by and through a Superintendent,**
3 **blasted a man who had a stellar 17-year career, in a**
4 **challenging community, and never had any issue**
5 **whatsoever with the community, but now his whole**
6 **livelihood, everything that he built around himself,**
7 **his home away from home, from Seattle, and everything**
8 **he's done has been destroyed?**
9 **MR. TAYLOR:** Objection.
10 **HEARING OFFICER SULTANIK:** What kind of
11 question, is that a question? And are we here to
12 determine this witness's perception of fairness? It is
13 what it is.
14 You've elicited facts. The determination
15 of whether or not this was fair or appropriate will be
16 up to the Board.
17 **MR. MALOFIY:** I know, but this is his HR
18 Director, the Executive HR Director, that is supposed
19 to be there for human relations and making sure there's
20 a safe environment.
21 **MR. TAYLOR:** Objection, speech making
22 again. There's no questions.
23 **MR. MALOFIY:** You're not the Hearing
24 Officer. If someone complains about sexual harassment,
25 you don't send them back into the school which is at

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1 issue. A female or a male does. You correct the issue
2 or you address it.
3 **HEARING OFFICER SULTANIK:** Because there's
4 a statutory obligation. Is there a statutory
5 obligation?
6 **MR. MALOFIY:** Yes.
7 **HEARING OFFICER SULTANIK:** Under State
8 Law --
9 **MR. MALOFIY:** Yes.
10 **HEARING OFFICER SULTANIK:** -- to correct
11 this kind of situation? And what is that statutory
12 obligation under Pennsylvania Law?
13 **MR. MALOFIY:** It's called a hostile work
14 environment. It's called the Constitution. It's
15 called the Fourth, Fifth, and Sixth --
16 **HEARING OFFICER SULTANIK:** No, no, that's
17 not working --
18 **MR. MALOFIY:** No, it is. Fourth, Fifth,
19 and Sixth, and Fourteenth Amendments.
20 **HEARING OFFICER SULTANIK:** Show me one case
21 in Pennsylvania where this kind of legal theory applies
22 in a nonsexual harassment situation, where an employee
23 was reinstated by management to his former position, or
24 to a position in the School District, and where hostile
25 work environment prohibited or caused the employee to

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1 prevail under the circumstances, in a nonsexual
2 harassment environment. Do you have any cases to
3 establish that?
4 **MR. MALOFIY:** The fact that you sit here as
5 a Hearing Officer and you question the Constitution and
6 the violations and not --
7 **HEARING OFFICER SULTANIK:** That wasn't the
8 question. I asked you for case authority.
9 **MR. MALOFIY:** It is littered, littered in
10 the Case Law.
11 **HEARING OFFICER SULTANIK:** Give me
12 one case.
13 **MR. MALOFIY:** I don't have to give you one
14 case right here.
15 **HEARING OFFICER SULTANIK:** I'm asking you
16 as the Hearing Officer to give me --
17 **MR. MALOFIY:** We briefed the issue. It's
18 all there. If you failed to read it this morning, I
19 can't help you.
20 **HEARING OFFICER SULTANIK:** I couldn't find
21 the case that you cited in there that established that
22 proposition.
23 **MR. MALOFIY:** No, no, no, you're absolutely
24 false. And it's in our briefing. You want to make a
25 very narrow issue. Show me where there's a sexual

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1 assault this and that.
2 It's an unsafe environment. You can't send
3 someone to an unsafe environment. If a kid is getting
4 beat up in school, if a Teacher has a problem, that has
5 to be addressed. That's why there is HR.
6 Maybe HR doesn't apply to a white male.
7 Maybe that's the issue here. A Conservative white
8 male.
9 **HEARING OFFICER SULTANIK:** No, no. I'm
10 just saying in a case of a student who is getting
11 beaten up, there's Title 9 that addresses that issue.
12 In the case of sexual harassment, there's
13 Title 7 that addresses those issues. Those are
14 statutory Laws that are in place.
15 I'm not aware of, and from reading your
16 Brief, I'm still at a loss of legal theory to establish
17 this unsafe work environment approach. And as you
18 know, OSHA doesn't apply to public school districts in
19 Pennsylvania.
20 **MR. MALOFIY:** I can appreciate. It may be
21 the second Hearing Officer can assist in digging up
22 some, looking at our Brief, and reading it and
23 understanding the Law.
24 But I'm sure you can look at it, and you'll
25 see that it's all there.

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1 Mr. Sultanik, I'm just going to continue
2 with the few questions I have, and I want to wrap this
3 up. I hope I don't belabor anyone else's time here.
4 I understand we have a difference of
5 opinion. I can appreciate that. But I can assure you
6 that we did brief this issue.
7 **BY MR. MALOFIY:**
8 **Q. If I may just ask you, you said there were**
9 **challenges. What kind of challenges were there at**
10 **Raub? You identified there were challenges at Raub, in**
11 **placing him back where he was?**
12 A. I didn't say there were challenges at Raub,
13 I said there were challenges for Mr. Moorehead at Raub.
14 **Q. Why?**
15 A. Because of the community outreach that we
16 heard at the Board Meetings made some reference to
17 Raub.
18 **Q. What was done to address that concern?**
19 **That's the whole thing that I'm talking about --**
20 A. Again as I've already --
21 **MR. TAYLOR:** Already asked and answered.
22 He's already explained that Mr. Moorehead avoided the
23 process by failing to return for work. He was set to
24 have a discussion with him regarding those
25 circumstances.

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1 **MR. MALOFIY:** Do you want to testify?
2 **MR. TAYLOR:** You've been doing it all
3 afternoon.
4 **MR. MALOFIY:** I'm on Cross Examination.
5 **MR. TAYLOR:** You've been testifying and
6 speech-making all afternoon.
7 **MR. MALOFIY:** You asked me to tell you what
8 the Constitution means. I'm trying to help you.
9 **MR. TAYLOR:** No, I know what the
10 Constitution means.
11 **BY MR. MALOFIY:**
12 **Q. You understand my question. You said there**
13 **was challenges of placing him back where he was because**
14 **of the community outreach, right?**
15 A. That's what I said, yes.
16 **Q. All right. So what was done after he**
17 **expressed to you that he was scared, and after he**
18 **expressed to you that he was concerned about his**
19 **safety, and after he expressed to you that he can't**
20 **return because the whole community has been poisoned**
21 **against him?**
22 **What if anything was done to address that**
23 **concern as the Executive Director of Human Resources?**
24 **MR. TAYLOR:** Same objection. Asked and
25 answered.

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1 **HEARING OFFICER SULTANIK:** I'll let the
2 witness one more time try to testify as to what was
3 done to the extent anything was done.
4 **THE WITNESS:** So again, in my letter, my
5 initial letter, it says that Mr. Moorehead will be
6 moving forward. You are to return to a teaching
7 assignment. Not at Raub. Not specifically in what he
8 was currently doing. But something that his
9 Certification would be appropriate, and also that he
10 was comfortable in.
11 I would take input from anybody in that
12 situation, including Mr. Moorehead.
13 **Q. What was --**
14 A. I'm sorry, I thought I was answering.
15 **Q. I'm sorry, I thought you were finished. My**
16 **apologies. Go ahead.**
17 A. I'm finished now.
18 **Q. How about input from Mr. Moorehead? How**
19 **about him or his family?**
20 A. I think I just said that. That that's what
21 I would be seeking, input from Mr. Moorehead.
22 **Q. What did he say in this letter; did you**
23 **read it?**
24 A. Again --
25 **Q. Go to the second page.**

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1 A. I've already answered that.
2 **HEARING OFFICER SULTANIK:** He's already
3 answered that. I'm not going to allow him to answer it
4 again. It's, this is duplicative beyond belief.
5 **BY MR. MALOFIY:**
6 **Q. Two things, and I'll just move forward from**
7 **this.**
8 **Mr. Moorehead asked you to send a letter,**
9 **excuse my, an email to the students, to the community,**
10 **to the people who were addressed initially, staff,**
11 **Teachers, students, and just publicly express to them**
12 **that he didn't do anything wrong, he didn't violate**
13 **Board policy on January 6th.**
14 **Did you ever listen to Mr. Moorehead's**
15 **pleas to you and simply send out an email correcting**
16 **the record and withdrawing the false statement as to**
17 **his involvement at the Capitol building protest,**
18 **anything?**
19 **MR. TAYLOR:** I'm sorry, Mr. Malofiy, can
20 you tell me where that request is made so I can read
21 it?
22 **MR. MALOFIY:** Yes. It's right here, second
23 page of Mr. Moorehead's letter. It's in your document,
24 sir.
25 **BY MR. MALOFIY:**

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1 **Q. It says account built matters. The**
2 **District and Board need to publicly post an apology on**
3 **the website and social media unequivocally correcting**
4 **the record and clearing my name. And send the apology**
5 **to the newspapers and news stations in Allentown.**
6 **They also need to send me an email, excuse**
7 **me, they also need to send an email to all students,**
8 **parents, Teachers, Administrators, and staff doing the**
9 **same.**
10 **There also needs to be mandatory training**
11 **for all staff and Board Members on free speech and due**
12 **process so this never happens again.**
13 **You said that you wanted to reach out or**
14 **listen to Mr. Moorehead's concerns. He told you his**
15 **concerns.**
16 **What, if anything, did you do to address**
17 **his concerns about account built , safety, and making**
18 **things right?**
19 A. I believe I referred this back to the
20 Superintendent and our Solicitors.
21 **Q. So, you did nothing?**
22 A. No, I referred --
23 **MR. TAYLOR:** Objection. He didn't say he
24 didn't do anything. You didn't like his answer.
25 **BY MR. MALOFIY:**

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1 **Q. Okay. What did your Solicitor and what did**
2 **your Attorneys do?**
3 **MR. TAYLOR:** Objection. Objection.
4 **BY MR. MALOFIY:**
5 **Q. What did they do? Not the communications,**
6 **what did they do, if anything?**
7 **HEARING OFFICER SULTANIK:** If you know?
8 **THE WITNESS:** I don't know.
9 **BY MR. MALOFIY:**
10 **Q. So you don't know if anyone did anything in**
11 **response to his concerns; fair statement?**
12 A. Correct.
13 **Q. Now, let's go to Exhibit E?**
14 A. Which one?
15 **Q. E, I'm just going through it. I'm going**
16 **through the packet from your Counsel.**
17 A. Yep.
18 **Q. Okay. You have it there, sir?**
19 A. Yes, I do.
20 **Q. September 13th, 2021, do you see that?**
21 A. Yes.
22 **Q. Notice of Loudermill Hearing, right?**
23 A. Yes.
24 **Q. If you go down to the fifth paragraph, it**
25 **says: The purpose of this letter is to provide you**

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1 with an opportunity to meet with me to provide any
2 information you would like to be considered by the
3 Allentown School Administration before any
4 recommendation is made affecting -- excuse me,
5 recommendation is made that could adversely affect your
6 continued employment, pay, and benefits? Do you see
7 that?
8 A. Yes, I do.
9 (Reporter requested clarification.)
10 BY MR. MALOFIY:
11 Q. Do you see that?
12 A. Yes.
13 Q. All right. Do you dispute that these
14 issues were raised at the Loudermill Hearing?
15 A. Quite frankly, the only thing I remember
16 you raising was that I never sent you any Notices. I
17 don't really recall anything else because I was
18 belabored under that for an hour or two hours.
19 Q. Let me ask you. Do you recall me
20 addressing any FBI concerns or investigation? Yes or
21 no?
22 A. I don't remember.
23 Q. The record will speak for itself, and the
24 Transcript will speak for itself.
25 A. So why do you have to ask me?

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1 Q. Just to engage your sincerity and
2 credibility as you sit here answering under oath?
3 A. Thank you.
4 Q. What you do and don't remember and if it's
5 convenient or if it's actually truthful.
6 MR. TAYLOR: Objection, no need for
7 commentary.
8 MR. MALOFIY: He asked me a question.
9 HEARING OFFICER SULTANIK: I will ignore
10 the commentary.
11 BY MR. MALOFIY:
12 Q. September 15th?
13 A. Different document?
14 Q. I'm sorry, excuse me. Excuse me. Let me
15 move to, do you recall -- well, I will refer to you in
16 the Transcript regarding the FBI, page 12, line 6, 7,
17 8, 14, page 12, line 15, page 13, line 2, 21, page 53
18 line 14, 19, 20, page --
19 (Reporter requested clarification.)
20 HEARING OFFICER SULTANIK: Do you expect
21 any reasonable human being being able to check out
22 those pages by the way you asked that?
23 MR. TAYLOR: I'm going to specifically
24 object. If we're going over the FBI testimony and
25 investigation, once again, he's already testified fully

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1 and completely that was his full knowledge of that
2 investigation. This is designed to beat up and torture
3 the witness.
4 MR. MALOFIY: He said he didn't remember
5 any part about it. He didn't remember the issues being
6 raised. And I want to know what happened since then
7 till now.
8 MR. TAYLOR: The Transcript speaks for
9 itself.
10 MR. MALOFIY: No, no, his memory can't
11 speak at all, unless I question him.
12 MR. TAYLOR: His memory has been taxed
13 already today.
14 MR. MALOFIY: Anything more, Mr. Taylor?
15 Can I continue with my questioning?
16 MR. TAYLOR: I'm sure I'll have a lot more.
17 BY MR. MALOFIY:
18 Q. All right. I'll just refer to page 83 of
19 the Transcript, which identifies all the places where
20 there is discussion regarding the FBI. All right.
21 Do you recall discussions regarding the
22 Fifth Amendment at the Loudermill, where he raises
23 concerns to you?
24 A. Again, the only thing I recall is you
25 asking why I didn't send you the memos.

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1 Q. Okay. I'll refer to page 83, again, on
2 issues relating to the Fifth. How about the 14th, do
3 you remember me raising or the issue of the Fourteenth
4 Amendment being raised?
5 MR. TAYLOR: Objection. I don't see how
6 this is relevant at all to Mr. Moorehead's failure to
7 attend, to report to work in the School Board Hearing,
8 in the School Board Code.
9 MR. MALOFIY: I just --
10 BY MR. MALOFIY:
11 Q. Do you recall anything about the 14th? A
12 few more questions I'm going to wrap this up.
13 MR. TAYLOR: Objection to relevance, again.
14 BY MR. MALOFIY:
15 Q. Do you recall anything about the
16 Fourteenth?
17 MR. TAYLOR: Objection.
18 HEARING OFFICER SULTANIK: I'm going to let
19 him -- what question are you asking? I can't even
20 figure it out at this point.
21 BY MR. MALOFIY:
22 Q. Do you recall any issues raised about the
23 Fourteenth Amendment in the Loudermill Hearing, which
24 we have a Transcript of?
25 HEARING OFFICER SULTANIK: What is the

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1 relevancy of his recollection of the Loudermill
2 proceeding today?
3 **MR. MALOFIY:** Because there's been time
4 since then, he was supposed to bring his concerns to
5 the HR Director, which he did.
6 And then what, if anything, was done? They
7 said they wanted his input. He testified he wanted his
8 input. We gave them his input. We told the
9 Administration --
10 **HEARING OFFICER SULTANIK:** But he's already
11 answered what he did with the information, and you have
12 that of record. It's already established.
13 You established of record what his response
14 was. The fact that it's in the Loudermill proceeding
15 at one point doesn't change that fact.
16 **MR. MALOFIY:** It's that after he
17 raised the concerns in the letter of July 30th, he did
18 nothing, or he at least cannot remember if him or his
19 Counsel had done anything.
20 And then it's after he brought his concerns
21 at the behest of Mr. Pidgeon to the Loudermill Hearing,
22 what, if anything, was done? I suspect the answer
23 would be nothing, as well?
24 **MR. TAYLOR:** I'm sorry, you're asking after
25 the Loudermill Hearing what was done?

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1 **MR. MALOFIY:** At or after, yes.
2 **HEARING OFFICER SULTANIK:** If that's the
3 question, I understand it.
4 So your question is at or after
5 the Loudermill proceeding, was there anything done with
6 respect to the safety concerns or unsafe environment
7 concerns raised by Mr. Moorehead? To the best of your
8 knowledge?
9 **THE WITNESS:** No, there was nothing.
10 **BY MR. MALOFIY:**
11 **Q. All right. Let me move to the Collective**
12 **Bargaining Agreement, Exhibit H. Collective Bargaining**
13 **Agreement. If we go to Article 10 on page 5; do you**
14 **see that?**
15 A. Give me a second.
16 Yes.
17 (Whereupon, a discussion was held off the
18 record.)
19 **HEARING OFFICER SULTANIK:** We're going to
20 try to end in a few minutes, if possible.
21 **MR. MALOFIY:** Yes.
22 **THE WITNESS:** Yes.
23 **BY MR. MALOFIY:**
24 **Q. Okay. It says here, just cause. No**
25 **employee shall be reprimanded in writing or discipline**

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1 **without just cause.**
2 **Then it says: Whenever, one, the District**
3 **has made a prior determination that it is considering**
4 **disciplinary action against any Member of the**
5 **Bargaining Unit.**
6 **And two, the District requests a Member of**
7 **the Bargaining Unit to appear before any Member of the**
8 **Administration, the District shall clearly inform the**
9 **Member of the nature of the meeting, and in the event**
10 **that the meeting is accusatory in nature, the District**
11 **shall advise the Member of his or her rights -- excuse**
12 **me, his or her right to representation, and shall**
13 **provide opportunity for the Member to obtain such**
14 **representation.**
15 **Do you see that?**
16 A. Yes.
17 **Q. Was that complied with?**
18 A. I believe so.
19 **Q. Before Mr. Moorehead was blasted by the**
20 **Administration, by the Board, by the District, and by**
21 **Superintendent Parker, was there just cause?**
22 A. I believe so.
23 **Q. And what was that just cause?**
24 A. The Facebook posts that Mr. Moorehead put
25 up.

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1 **Q. That's not the reason in the initial**
2 **concern, the initial letter that you wrote, it had**
3 **nothing to do with that, right?**
4 A. I'm not sure what you're referring to.
5 **Q. Okay. Let's move forward. Section F, next**
6 **page, page 6?**
7 A. F, you said?
8 **Q. Yeah, F. Any criticism by an Administrator**
9 **or Board Member of a Member of the Bargaining Unit**
10 **shall be made in confidence and not in the presence of**
11 **students, parents, or at public gatherings, unless the**
12 **same is subject at a Hearing provided by an applicable**
13 **Statute of this Commonwealth.**
14 **Do you see that?**
15 A. Yes.
16 **Q. Okay. You don't dispute that Mr. Parker**
17 **blasted an email on January 7th, that went out to**
18 **families, staff, and community, correct?**
19 A. I have, no, Mr. Parker did send that out.
20 But again, Mr. Moorehead is not identified in that
21 correspondence.
22 **Q. Now, did the community understand it was**
23 **about Mr. Moorehead when they --**
24 A. I don't know what the community
25 understands, you have to ask them.

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1 **Q. Were you at the Hearings, the February**
2 **11th, 2021 Hearings?**
3 A. I was, already asked and answered.
4 **Q. Did anyone feign confusion as you are here**
5 **today about who the staff member was at Allentown**
6 **School District that was Mr. Moorehead?**
7 A. But again, you're talking from early
8 January till the middle of February.
9 **HEARING OFFICER SULTANIK:** He shouldn't be
10 required to testify what other people thought. He's
11 not in a position to do that. If you want to draw an
12 inference of that, that's fine.
13 I'm also going to raise an issue that I
14 raised with you in the Prehearing Conference, that
15 you're attempting to use the Collective Bargaining
16 Agreement on behalf of your employee when you
17 statutorily are not the enforcing body under the
18 Collective Bargaining Agreement, as Mr. Moorehead is
19 not a party to that Agreement.
20 Only the Union is a party to the agreement,
21 which is probably why you should have elected an
22 arbitration remedy versus a Board remedy.
23 **MR. MALOFIY:** Yes, let's have the Union,
24 who also was aware of the FBI investigation handle
25 Mr. Moorehead privately, so the public couldn't lay

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1 witness to what's happening. I disagree.
2 **MR. TAYLOR:** That's speech making.
3 **MR. MALOFIY:** I have one more document
4 here, I think maybe one or two and I'll wrap it up.
5 **HEARING OFFICER SULTANIK:** Please.
6 **BY MR. MALOFIY:**
7 **Q. October 12th, 2021, Statement of Charges**
8 **and Notice of Hearing?**
9 A. Which Exhibit, I?
10 **Q. I'm sorry, I, yes.**
11 A. Yes.
12 **Q. It says here, these Statement of Charges**
13 **you testified earlier on that you weren't aware if the**
14 **Board was involved in this, correct?**
15 A. Say it again?
16 **Q. You weren't aware whether or not the Board**
17 **was involved in the Statement of Charges?**
18 A. I never said that.
19 **Q. Okay. Well, are you telling me that --**
20 A. I said I didn't have any conversations with
21 the Board.
22 **Q. The Statement of Charges, who put these**
23 **together, you or somebody else?**
24 A. Our Attorneys put them together.
25 **Q. Not you?**

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1 A. Not me.
2 **Q. Did you have any involvement?**
3 A. Minimal, if anything. Just review to make
4 sure what I see in here is what I, what's been
5 presented.
6 **Q. You looked at this, correct, I would hope,**
7 **right?**
8 A. Yes.
9 **Q. You signed your name to it maybe? No?**
10 A. I did not.
11 **Q. Nancy Wilt did?**
12 A. Um-hum.
13 **Q. What did you do, if anything, in regards to**
14 **the Statement of Charges, did you suggest, recommend?**
15 A. No. That came from the Solicitor's office.
16 **Q. What do you do as the HR Director exactly,**
17 **as Executive HR Director? What's your actual role, I**
18 **don't even know?**
19 **HEARING OFFICER SULTANIK:** I'm going to
20 object. He's already --
21 **MR. MALOFIY:** I'll move forward.
22 **HEARING OFFICER SULTANIK:** I got to tell
23 you, he's already testified.
24 **MR. MALOFIY:** I'll move forward. Last
25 couple questions here.

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1 **THE WITNESS:** Are we still on it?
2 **BY MR. MALOFIY:**
3 **Q. What?**
4 A. Are we still on that one?
5 **Q. Yeah, I am. At the Hearing, you have the**
6 **following rights?**
7 **It says here, the right to hear the witness**
8 **is, and evidence against you, and cross examine said**
9 **witnesses. Do you see that?**
10 A. Yes.
11 **Q. It says three -- or one, the right to be**
12 **represented by Counsel. Do you see that?**
13 A. Yes, I do.
14 **Q. Three says: The right to present witnesses**
15 **and evidence on your own behalf and testify on your own**
16 **behalf; do you see that?**
17 A. Yes, I do.
18 **Q. Four, the right to have your choice of**
19 **either a public or private Hearing; do you see that?**
20 A. I do.
21 **Q. He has a right, correct, he can choose?**
22 A. Correct, yes.
23 **Q. And he chose to have a Public Hearing,**
24 **correct?**
25 A. Correct.

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1 **Q. And number five, all other rights**
2 **guaranteed to you by the Constitution and applicable**
3 **Law; do you see that?**
4 A. Yes, I do.
5 **Q. Okay. When you see the Constitution in the**
6 **Capitol C, that's the United States Constitution,**
7 **correct?**
8 A. Yes.
9 **Q. Now, when you gave him that Statement of**
10 **Charges or at any point in time, did you send**
11 **Mr. Moorehead a letter advising him, sharing with him**
12 **disclosing that there was FBI involvement in some way**
13 **into his investigation; yes or no?**
14 **MR. TAYLOR:** Objection, here we go again.
15 **MR. MALOFIY:** I want to know if they ever
16 disclosed that, the narrow issue, now that we've gone
17 through everything and refreshed his memory on a number
18 of different issues.
19 **MR. TAYLOR:** His memory was fine all along.
20 **MR. MALOFIY:** How can you testify to this
21 man's memory?
22 **MR. TAYLOR:** His memory was fine all along.
23 He testified to what he knew. You're upset and unhappy
24 with his responses. That's what it comes down to.
25 **MR. MALOFIY:** I love his responses.

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1 **MR. TAYLOR:** No, you don't.
2 **MR. MALOFIY:** I honestly, I'm so happy that
3 for twelve months we finally have it on the record that
4 there was FBI involvement that was concealed. I'm
5 very, very, very happy today.
6 **HEARING OFFICER SULTANIK:** Well, I have to
7 tell you as making a recommendation on the fact
8 finding, I can't, I don't see any evidence about
9 an FBI investigation that you've established through
10 Cross Examination.
11 You're going to have to work a little bit
12 harder to prove that. When the witness himself said
13 through hearsay information he heard about it. I have
14 heard no definitive information other than your
15 conclusions and your own soliloquy about FBI
16 involvement.
17 But I'll leave that up to you to prove your
18 case. Are you finished your Cross Examination,
19 Mr. Malofiy?
20 **MR. MALOFIY:** Oh, no, I have that last
21 question pending, and then I don't want to address that
22 right now.
23 **BY MR. MALOFIY:**
24 **Q. But I do want to just address -- all I'll**
25 **say is had our Subpoena to the FBI and law enforcement**

Page 215

1 **was denied. And all I will say is that opposing**
2 **Counsel is not waiving the Attorney/client privilege**
3 **and you're not going to tell me what your Attorney**
4 **said, correct?**
5 A. Correct.
6 **MR. MALOFIY:** That's my response to that
7 answer.
8 **BY MR. MALOFIY:**
9 **Q. Now, real quickly, now that we've gone**
10 **through all this evidence, we've gone through these**
11 **pieces of information, you say do you recall hearing**
12 **about the FBI from Ms. Ramos, Mr. Freund, or**
13 **Mr. Taylor, and you can't say exactly when or how, but**
14 **you remember something to that effect.**
15 **Now can you tell me if at any point in time**
16 **a letter was sent to Mr. Moorehead or his Counsel**
17 **sharing that information of the FBI involvement? Yes,**
18 **there's a letter, there's a communication, or no, there**
19 **isn't?**
20 A. Regarding hearsay information?
21 **Q. You're not going to tell me what your**
22 **Counsel told you, correct?**
23 A. No, I'm going to tell you exactly what I
24 understand it to be. Somebody told me in passing that
25 something might be happening. And that's it. There

Page 216

1 was no evidence to support it. There was nothing else,
2 no.
3 **Q. You said you handed off the investigation**
4 **to --**
5 A. No, I was told to stay out of the
6 investigation after initially, as I told you earlier,
7 by Superintendent Parker. I --
8 **Q. That's new information, then?**
9 A. No, it's not new. That's the same
10 information I shared earlier.
11 Number two, well, you asked me your
12 question, I'm trying to answer it.
13 **Q. Well, just to be clear, no letter that**
14 **you're aware of came from the HR Administration or the**
15 **Board to Mr. Moorehead disclosing him of any concern,**
16 **possibility, or potential possibility, or hearsay of**
17 **FBI investigation as to his matter, correct?**
18 A. Correct.
19 **MR. MALOFIY:** We do feel there's an open
20 issue as to the secret, well, the file concealed in
21 your desk. The special file of Mr. Moorehead. That's
22 in a binder in your desk.
23 But besides that, hold on one second.
24 I have nothing further of this witness.
25 **HEARING OFFICER SULTANIK:** Just as a matter

1 of record, we need to pick a date for a continued
 2 Hearing while everybody is here with their schedules.
 3 **MR. TAYLOR:** I'm sorry, are we done with
 4 Mr. Pidgeon?
 5 **HEARING OFFICER SULTANIK:** I don't know.
 6 You may want to do Redirect.
 7 **MR. TAYLOR:** I just have one question.
 8 **REDIRECT EXAMINATION**
 9 **BY MR. TAYLOR:**
 10 **Q. Mr. Pidgeon, at any point after the**
 11 **Loudermill, did Mr. Moorehead say I intend to return to**
 12 **work, I plan on returning to work?**
 13 A. No.
 14 **MR. TAYLOR:** That's it.
 15 **HEARING OFFICER SULTANIK:** Any Recross?
 16 **MR. MALOFIY:** No, I think the record is
 17 clear.
 18 **HEARING OFFICER SULTANIK:** Well, the
 19 witness is excused. We need to -- does the
 20 Administration rest? Or you want to have the right for
 21 Rebuttal?
 22 **MR. TAYLOR:** There may be Rebuttal
 23 testimony.
 24 **HEARING OFFICER SULTANIK:** There may be
 25 Rebuttal. Okay. So at the next Hearing, the --

1 **MR. MALOFIY:** To be clear, he rests his
 2 case?
 3 **MR. TAYLOR:** Yes.
 4 **HEARING OFFICER SULTANIK:** Yes, yes. The
 5 next Hearing would be up to you, Mr. Malofiy, to bring
 6 your case at the next Hearing. And we need to pick a
 7 Hearing date.
 8 (Whereupon, the Hearing was concluded at
 9 4:55 o'clock p.m.)
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 23
 24
 25

1 **CERTIFICATE**
 2 I hereby certify that the proceedings and
 3 evidence are contained fully and accurately in the
 4 notes taken by me on the Hearing of the foregoing cause
 5 to the best of my ability, and that this copy is a
 6 correct Transcript of the same.
 7
 8
 9
 10

Audry Leister Stengel,
 Court Reporter
 63 Cedar Street
 Pottstown, PA 19464
 Phone: (610) 323-2478

EXHIBIT 44

From: [Kristin Reed](#) on behalf of [Brian Taylor](#)
To: [AJ Fluehr](#); [Francis Alexander Malofiy](#)
Cc: [John Freund, III](#)
Subject: RE: ASD - Continuing Duty Regarding Subpoenas
Date: Wednesday, December 01, 2021 2:49:39 PM
Attachments: [image001.png](#)
[00941381.PDF](#)

Gentlemen,

I write in response to your email of this date to confirm that Mr. Pidgeon and Ms. Ramos will be in attendance on December 14, 2021, consistent with the Hearing Officer's Memorandum No. 6 issued on November 23, 2021. I also note that Memorandum No. 6 did not set November 30, 2021 as a due date for any filing or document production nor response date for any issue.

With regard to document production, after lunch on Day One of the hearing you were provided with all documents that were held in Mr. Moorehead's employment file from January 2021 to the present as requested.

Please see attached Employer Allentown School District's Privilege Log with respect to what Mr. Malofiy has referenced as the "private" file. Thank you for your continued cooperation in this matter.

Brian

KING, SPRY, HERMAN, FREUND & FAUL, LLC

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From: AJ Fluehr <aj@francisalexander.com>
Sent: Wednesday, December 1, 2021 12:29 PM
To: Francis Alexander Malofiy <francis@francisalexander.com>; Brian Taylor <btaylor@KingSpry.com>; John Freund, III <jef@KingSpry.com>
Subject: RE: ASD - Continuing Duty Regarding Subpoenas

Mr. Taylor,

We have not received a response to our below email. Mr. Pidgeon and Ms. Ramos are still under subpoena. Please confirm by Thursday, December 2, 2021, that the District will produce them on December 14, 2021, to testify in Mr. Moorehead's case in chief.

Please also have both produce any and all documents regarding Jason Moorehead, including any files or binders, 5 days prior to the hearing. This material was due on November 22, 2021, and after the hearing we asked for this to be addressed by November 30, 2021, but heard nothing.

If they contain privileged material, then please make sure they are produced in redacted form with a privilege log.

AJ Fluehr, Esquire
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Media, PA 19063
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aj@francisalexander.com

From: Francis Alexander Malofiy
Sent: Thursday, November 25, 2021 2:56 AM
To: Brian Taylor <btaylor@KingSpry.com>; John Freund, III <jef@KingSpry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>
Subject: ASD - Continuing Duty Regarding Subpoenas
Importance: High

Dear Counsel,

Please be sure Ms. Ramos and Mr. Pidgeon are available for the December 14, 2021 hearing.

Additionally, because Mr. Pidgeon is resigning, please be sure that both files regarding Jason Moorehead—the “normal” personal file and the “private” binder which is kept in Mr. Pidgeon’s desk—are maintained and are not altered in anyway. We demand the production of both files relating to Mr. Moorehead and a privilege log regarding any privilege which you are asserting regarding any document, correspondence, or thing contained therein.

Additionally, Mr. Pidgeon’s subpoenas requested these documents and it was not produced at the hearing on 11/22/2021. There is a continuing duty to comply with the subpoena and we expect this to be addressed no later than Tuesday, November 30, 2021.

Lastly, this is a reminder of your responsibilities to comply with our prior spoliation notice and preserve any and all documents and things in any form relating to Mr. Moorehead—especially as it relates to the investigation, reports, or recommendation by the Administration, Board, district, or law enforcement (which would include the FBI).

Additionally, please provide updated address and contact information including phone number and email for:

- Thomas Parker
- Lucretia Brown
- Mailyn Martinez
- Anthony Pidgeon

With every good wish, I am,

Francis Malofiy, Esquire
Francis Alexander, LLC
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
E: francis@francisalexander.com

From: Brian Taylor <btaylor@KingSpry.com>
Sent: Saturday, November 20, 2021 1:57 AM
To: AJ Fluehr <aj@francisalexander.com>
Cc: John Freund, III <jef@KingSpry.com>; Francis Alexander Malofiy <francis@francisalexander.com>; Jeffrey T. Sultanik <JSultanik@foxrothschild.com>
Subject: Re: Service of Ramos and Pidgeon Subpoenas

Mr. Fluehr:

They both will be in attendance.

Thanks.

-Brian

On Nov 19, 2021, at 8:15 PM, AJ Fluehr <aj@francisalexander.com> wrote:

Mr. Taylor,

Jen Ramos and Tony Pidgeon are employees of Allentown School District.

As such, we are serving their subpoenas upon you as their counsel. Please have them present on Monday and provide all the requested documents prior to the hearing.

Sincerely,

AJ Fluehr, Esquire
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aj@francisalexander.com

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

EMPLOYER ALLENTOWN SCHOOL DISTRICT'S PRIVILEGE LOG
TO RESPONSES AND OBJECTIONS TO
REQUEST FOR PRODUCTION OF DOCUMENTS

NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	REASON FOR PRIVILEGE
1-299	Allentown School District Investigation of Employee Jason Moorehead prepared by Solicitors, King, Spry, Herman, Freund & Faul, LLC.	Pa.R. Evid. 401 and 402 as the request seeks facts and information which is not of consequence in determining the action and not relevant and Pa.R.Evid. 501 and Pa.R.C.P. 4003.3, as it includes information which may be privileged pursuant to the attorney work product doctrine and/or attorney client privilege, and/or as containing mental impressions, conclusions, opinions or legal theories.

Respectfully submitted,
KING, SPRY, HERMAN, FREUND & FAUL, LLC

By: 

King, Spry, Herman, Freund & Faul
John E. Freund, III, Esquire
Brian J. Taylor, Esquire
One West Broad Street, Suite 700
Bethlehem, Pa. 18018
(610)209-5101
Special Counsel to the Allentown School District

Date: December 1, 2021

EXHIBIT 45

From: [AJ Fluehr](#)
To: [Brian Taylor](#); [Sultanik, Jeffrey T.](#)
Cc: [Francis Alexander Malofiy](#)
Subject: Proposed Subpoenas - In Re: Jason Moorehead
Date: Friday, December 03, 2021 4:59:00 PM
Attachments: [Office of Superintendent Subpoena.pdf](#)
[Jesika Steuerwalt Subpoena.pdf](#)

Mr. Sultanik,

Please find attached the follow proposed subpoenas:

- Office of Superintendent Allentown School District, Designee
- Jesika Steuerwalt – Mr. Moorehead’s prior union attorney who has knowledge of inquiry into Jason Moorehead

We also reiterate that the Harris and Conover subpoenas be issued for the following reasons:

At the hearing, Mr. Pidgeon testified that community outrage was the reason that Mr. Moorehead could not return to Raub. This is exactly what Mr. Moorehead has been arguing: that the District’s actions and omissions created an unsafe and hostile environment that he cannot return to. The notion that this hostile environment is restricted only to Raub is simply baseless. The February 11, 2020, Board Meeting played a major role in fostering that outrage based on the prior false statements by the District that were never corrected. Conover played a large role at the meeting in encouraging the false, defamatory, and otherwise hostile statements regarding Jason Moorehead that helped create this toxic work environment. Conover and Harris are also believed to have worked with community groups to encourage students, parents, and community members to speak out against Moorehead at Board Meetings and on social media.

We also ask that the FBI subpoena be reissued since Mr. Pidgeon testified that Jen Ramos told him there was FBI involvement.

We also have still not received any document, agreement, or meeting minutes designating Mr. Sultanik or Fox Rothschild as hearing officer. This must be produced.

Lastly, we ask that a proper and detailed privilege log be provided for the binder. The log that Mr. Taylor is completely unacceptable. It does not identify dates, times, participants, and reason for privilege assertion. Furthermore, it stretches credulity to its breaking point that there is not a single nonprivileged page or portion thereof in 299 pages of documents. Each document must be produced with only the privileged communications redacted.

Our witnesses will be

Jen Ramos

Tony Pidgeon

Office of Superintendent

Jesika Steuerwalt

Sam Stretton, Ethics and Scholastic Responsibility Expert

EXHIBIT 46

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

**EMPLOYER ALLENTOWN SCHOOL DISTRICT'S
OBJECTION TO ISSUANCE OF SUBPOENAS AND EXPERT WITNESS TESTIMONY
AND ASSERTION OF PRIVILEGE LOG**

Allentown School District (hereafter “the District”) by and through its Special Counsel, King, Spry, Herman, Freund & Faul, LLC hereby files the herein Objection to the Issuance of Various Subpoenas and expert testimony and states as follows:

I. BACKGROUND

Pursuant to Hearing Officer’s Email Correspondence of December 3, 2021 the District objects to the issuance of various subpoenas requested by employee Jason Moorehead in advance of his employment hearing for the following individuals:

- 1) Jesika Steuerwalt
- 2) Sam Stretton
- 3) Lisa Conover
- 4) FBI Agent
- 5) Phoebe Harris

II. LEGAL ARGUMENT

**A. THE TESTIMONY REQUESTED AND EXPECTED OF THE
PROPOSED WITNESSES IS IRRELEVANT AND THUS INADMISSABLE**

The District conducted an investigation into the activities and actions of Mr. Moorehead during the January 6, 2021 insurrection upon the United States Capitol building. The District conducted an extensive investigation and determined that Mr. Moorhead did travel to Washington, D.C. and posted images of himself and statements which appear to be supportive of the insurrection. The investigation ultimately determined that though Mr. Moorehead was in

Washington DC in support of former President Trump's rally on the mall, he had not been present at the Capitol.

The District first became aware of the postings later the same evening and posted a statement on its website regarding its concern over the presence of a staff member at the insurrection. Of significant note, this posting by former Superintendent Thomas Parker did not identify Mr. Moorhead. Publication of his presence was the result solely of Mr. Moorhead's online actions and activities. Members of the school community, which is comprised primarily of various majority groups, spoke out in protest regarding Mr. Moorehead's continued employment.

It is expected that Mr. Moorhead and/or his counsel will attempt to offer oral argument and testimony as to the investigation and his allegations as set forth by his counsel at his Loudermill that the public's reaction and outcry at his action has made it impossible for him to return. The issue is not the scope or results of the investigation which concluded with a return to work decision by former Superintendent Marilyn Martinez but rather whether Mr. Moorehead ignored and has continued to ignore a directive of employer.

Evidence is relevant if it has "any tendency to make a fact [of consequence] more or less probable than it would without the evidence." Pa.R.E. 401. Irrelevant evidence is inadmissible. Pa.R.E. 402. Teichman v. Evangelical Community Hospital, 237 A.2d 1082 (Pa. Super. 2020). Moreover, even relevant evidence may be excluded "if its probative value is outweighed by one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Pa.R.E. 403. Unfair prejudice, in particular, is a basis for exclusion and is defined as a tendency to suggest decision on an improper basis or diver the jury's attention from its duty of weighing the evidence impartially. Smith v. Morrison, 47 A.3d 131 (Pa. Super. 2012); Commonwealth v. Wright, 961 A.2d 119 (Pa. Super. 2008).

Mr. Moorehead was ordered return to work with teaching guidelines and conditions relating to instruction in the classroom. The scope and result of the investigation provide no legal or contractual basis for failing to return to work in August 2021. All other issues including such blatantly unrelated issues such the identification of the FBI agent are completely irrelevant to the issues of Mr. Moorehead's continued refusal to follow a directive.

Moreover, it is believed based upon the content Mr. Moorehead's counsel's objection to the Loudermill that Mr. Moorehead intends to raise various irrelevant and ancillary issues in an attempt to improperly inflame and divert the Board of School Directors who will serve as the triers of fact and ultimate decision makers. None of the above proposed witnesses have any knowledge or played any role in the administrative process regarding Mr. Moorehead's leave or reinstatement to work. As such the District would object to subpoenas issued to the above individuals or entities.

Additionally, the District objects to any testimony on the part of Mr. Stretton who is listed as an Ethics and Scholastic Responsibility Expert. The facts and legal issues involved do not require any expert testimony or specialized knowledge. Moreover, Mr. Stretton has not served an expert report of his purported analysis, opinions or qualifications. As such, the admission and consideration of any such testimony by this witness would not only be irrelevant and unnecessary but would also constitute prohibited bolstering and prejudicial to the District.

B. ASSERTION OF PRIVILEGE LOG

The investigation of Mr. Moorehead was requested by the Administration and conducted by its then solicitors, the law firm of King, Spry, Herman, Freund and Faul, LLC (hereafter "KingSpry"). At all times KingSpry was acting in its capacity as solicitors and providing legal advice to the Administration. Such relationship, including the entirety of the report and any attached exhibits contain the mental thoughts and impressions of the attorneys. Such work

product and communication is protected by the Attorney-Client privilege and can only be waived by the client. The Administration has declined to waive its privilege to the entirety of the report.

C. RESERVATION OF RIGHTS

In the event that the subpoenas are issued and served, the District reserves the right to raise objections to any testimony, statement or other evidence from all the subpoenaed fact witnesses and proffered expert witnesses on the grounds stated in this objection as well as any other applicable legal grounds.

Respectfully submitted,
KING, SPRY, HERMAN, FREUND & FAUL, LLC

By: 

King, Spry, Herman, Freund & Faul
John E. Freund, III, Esquire
Brian J. Taylor, Esquire
One West Broad Street, Suite 700
Bethlehem, Pa. 18018
(610)209-5101
Special Counsel to the Allentown School District

Date: December 6, 2021

EXHIBIT 47

From: AJ Fluehr
To: ["Sultanik, Jeffrey T."](#); ["Brian Taylor"](#); ["John Freund, III"](#)
Cc: [Francis Alexander Malofiy](#)
Subject: RE: Response on Subpoenas and Log
Date: Tuesday, December 07, 2021 5:13:00 PM
Attachments: [2021.12.07 - ASD - Moorehead School Board Meeting Signs and Board Member....pdf](#)

Mr. Sultanik,

I am attaching documents regarding Conover and Harris's conduct.

Some follow up notes, Mr. Moorehead said nothing after January 6, until much later in January when he was forced to defend himself against the firestorm created by the District.

Lastly, the parenthetical in the fourth paragraph should have directed you to the copious case law on page 3 of Moorehead's memo regarding analogous case law establishing that a hostile environment of any kind (not just sex discrimination) legally prevents a return to work.

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Media, PA 19063
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aj@francisalexander.com

From: AJ Fluehr
Sent: Tuesday, December 07, 2021 4:59 PM
To: Sultanik, Jeffrey T. <JSultanik@foxrothschild.com>; 'Brian Taylor' <btaylor@KingSpry.com>; John Freund, III <jef@KingSpry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>
Subject: Response on Subpoenas and Log

Mr. Sultanik,

The District's summation of the issues is false, misleading, and makes an array of damaging admissions, but does nothing to establish why the subpoenas are inappropriate.

The simple fact of the matter is that, without talking to Mr. Moorehead, the District put out a defamatory and false statement claiming he had participated in the riot at the Capitol Building that

enflamed the community against him. As Mr. Taylor's own summary demonstrates, the public knew exactly which Staff Member the District's statement was talking about. Note that Mr. Moorehead posted nothing and said nothing after Jan. 6, 2021.

The District, despite learning almost immediately that Mr. Moorehead had not been at the Capitol Building or "insurrection," has never corrected this statement. It has never addressed why it publicly (and falsely) criticized Mr. Moorehead in violation of the CBA.

As a result, the community raged against Mr. Moorehead and believed that he had committed crimes and treason. He received terrifying phone calls and threats and had to go to the police. He cannot return to this environment as it is unsafe and extremely hostile, as admitted by even Mr. Pidgeon. See Moorehead Brief (

Secretly, the District was also working with the FBI. This was never disclosed in violation of his rights.

CONOVER AND HARRIS – The Subpoenas are Relevant

There is much evidence of this online, but it is sufficient to point to the February 11, 2021 Board Meeting where the invective against Mr. Moorehead was truly outrageous. This invective was fostered by Board Members, especially Lisa Conover and Phoebe Harris, despite the advice of counsel. Not only was this publicly encouraged at the meeting, but Conover and Harris worked with the community and school members to have people speak out against Moorehead using the false political narrative and criticism publicly pushed by the District.

For instance, Promise Neighborhood is a community organization that works directly with ASD. Lisa Conover was on the Board as of March 1, 2021. Promise Neighborhood started a Change.org petition to have Moorehead fired and said that he had participated in the Capitol Building Riot and was a racist trying to harm minorities. The Group advertised on Facebook to have people speak out against Moorehead at the February 11, 2021 meeting. Phoebe Harris reposted this call to arms on her public Facebook page on February 5, 2021.

STEUERWALT – The Subpoena is Relevant

It has become known that Steuerwalt (and Leibold) were aware of FBI investigation, and that is why they abandoned Moorehead. The hearing officer said he wanted more proof the FBI was involved. Steuerwalt has the information.

The fact that Moorehead's 4th and 5th Amendment and 14th Amendment rights were so callously violated goes directly to whether this is the type of environment and employer that he can return to. He cannot return to an employer who treats him in such a manner there is not trust and the environment is hostile and one of betrayal.

PRIVILEGE LOG

The District's assertion that a privilege log does not have to contain any identifying information is simply false. If third parties were present, it is not privilege. If there are sub documents or exhibits not privilege, they must be produced.

The privilege must identify if sent, received, or reviewed by third parties. An affirmative statement has to be made regarding this fact for every document, every part thereof, and any exhibit or attachment. For instance, any communication to or from the FBI is not privileged whether or not it was sent to the District' attorneys. It is still discoverable.

The current privilege log does not have an index, a table of contents, or an exhibit list of what is included. We believe that the 299 pages identify multiple FBI agents, that there were official government inquiries into Mr. Moorehead, and that his devices were searched by the FBI and its affiliates. We also believe the FBI reported back to the District on the results of their investigations.

The district has failed to identify whether this investigation is ongoing, which is a defense as to why he cannot return because it would violate his rights.

AJ Fluehr, Esquire
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EXHIBIT 48

From: [Sultanik, Jeffrey T.](#)
To: [AJ Fluehr](#); [Brian Taylor](#)
Cc: [Francis Alexander Malofiy](#); [John Freund, III](#); [Haaz, Samuel A.](#); [Wilson, Sheryl](#); [Conolly, Cathy](#)
Subject: Re: In Re Jason Moorehead; Order re issuance of subpoenas
Date: Monday, December 13, 2021 2:47:01 PM

We=Mr. Haaz and me. Based upon the assertions of the administration, we will conduct an in camera review of the report which should be produced to us tomorrow at the hearing in order to determine whether or not the entire investigation report is covered by either the attorney client privilege or work product doctrine.

From: AJ Fluehr <aj@francisalexander.com>
Sent: Monday, December 13, 2021 2:21 PM
To: Sultanik, Jeffrey T.; Brian Taylor
Cc: Francis Alexander Malofiy; John Freund, III; Haaz, Samuel A.; Wilson, Sheryl; Conolly, Cathy
Subject: [EXT] RE: In Re Jason Moorehead; Order re issuance of subpoenas

Mr. Sultanik,

You ordered the District to present a privilege log. They unilaterally disobeyed your order. That is our position. If you are in fact a neutral hearing officer, then you should compel the privilege log to be produced by close of business. Of course, our position is also that this entire proceeding is biased and a sham, and the conduct of Fox Rothschild and King Spry confirms that.

When you say “we believe” this review report is irrelevant, who is “we”? Only you are the hearing officer. Moreover, Jason Moorehead has consistently argued that the District (obviously) created a hostile and unsafe environment that he cannot return to. Mr. Pidgeon even admitted that Mr. Moorehead could not return due to “community outrage” created by the District. Mr. Moorehead also has serious concerns that he is under FBI investigation, and does not believe he can ever return to the District given the way it was hidden from him that he was in criminal jeopardy and the District was acting as an arm of the FBI. The fact of the matter is that the District’s solicitors (including you Mr. Sultanik) do not get to dictate which defenses Mr. Moorehead can assert just because they are inconvenient to your clients and your firms. It is plain as day that an employee cannot be reinstated to a hostile and unsafe environment, and the attempts to ignore this reality fall flat.

Rotely claiming that Mr. Moorehead has not returned to work—and ignoring the predicate question of whether he *could* return to work—does nothing to change the fact that Mr. Moorehead cannot return to work, and that the given grounds for termination are pretextual and absurd.

Also, we must note that the statement Mr. Moorehead ignored the District is factually false. His counsel responded on July 30 to Mr. Pidgeon explaining the safety concerns, and Mr. Moorehead also wrote to Mr. Pidgeon on August 16, 2021 further conveying his position. A lawsuit was also filed against the District, Pidgeon, and the Board—and sent to King Spry. That the allegedly “neutral” hearing officer would repeat such a flagrant lie being pushed by the District speaks volumes. We will not let a false narrative be pushed about what has occurred so far in this matter.

Sincerely,

AJ Fluehr, Esquire
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Media, PA 19063
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F: (215) 500-1005
aj@francisalexander.com

From: Sultanik, Jeffrey T. [mailto:JSultanik@foxrothschild.com]
Sent: Monday, December 13, 2021 12:56 PM
To: Brian Taylor <btaylor@KingSpry.com>
Cc: Francis Alexander Malofiy <francis@francisalexander.com>; AJ Fluehr <aj@francisalexander.com>; John Freund, III <jef@KingSpry.com>; Haaz, Samuel A. <SHaaz@foxrothschild.com>; Wilson, Sheryl <SWilson@foxrothschild.com>; Conolly, Cathy <CConolly@foxrothschild.com>
Subject: Re: In Re Jason Moorehead; Order re issuance of subpoenas

We await Mr. Moorehead's position on this issue.

However, it is important to note that we believe that this not reviewed report would not make a fact at issue more or less likely to be properly addressed. The facts at issue are that Moorehead was reinstated and that Mr. Moorehead ignored requests to respond to letters and to attend to his duties as a teacher in the district.

Unless this report contains some information that Mr. Moorehead was in danger in the fall of 2021 should he come back to work, we do not think the investigation report would be relevant to narrow the issues presented at the hearing within the jurisdiction of the hearing officer.

From: Brian Taylor <btaylor@KingSpry.com>
Sent: Monday, December 13, 2021 11:57 AM
To: Sultanik, Jeffrey T.
Cc: Francis Malofiy Esq.; AJ Fluehr; John Freund, III; Haaz, Samuel A.; Wilson, Sheryl; Conolly, Cathy
Subject: [EXT] Re: In Re Jason Moorehead; Order re issuance of subpoenas

The School District asserts privilege to the entire Investigation Report of Employee Jason Moorhead which includes an actual 29 page report and all exhibits. It was authored by the KingSpry law firm in their capacity as Solicitors to the District and contains and is comprised of communications with the administration and legal advice drafted at their request. Thank you

-Brian

On Dec 9, 2021, at 5:40 PM, Sultanik, Jeffrey T. <JSultanik@foxrothschild.com> wrote:

Please review the attached order.

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EXHIBIT 49

Allentown School District
In Re: The Matter of Jason Moorehead

Session 2
December 14, 2021



Min-U-Script® with Word Index

Page 1

1 Termination Hearing
 2 (Open Hearing)
 3 RE: Jason Moorehead
 4 Allentown School District
 5 Stenographic Report of Termination Hearing
 6 held at
 7 Allentown School District
 8 Administration Building
 9 31 South Penn Street
 10 Allentown, PA 18105
 11
 12 Tuesday,
 13 December 14, 2021
 14 Commencing at 12:12 p.m.
 15
 16 SESSION 2
 17 PAGES 1 - 136
 18 - - -
 19 HEARING OFFICERS:
 20 Jeffrey Sultanik, Esquire
 21 and Samuel A. Haaz, Esquire
 22 Fox, Rothschild, LLP
 23 10 Sentry Parkway, Suite 200
 24 P.O. Box #3001
 25 Blue Bell, PA 19422-3001
 jsultanik@foxrothschild.com
 shaaz@foxrothschild.com
 - - - - -
 BUCKS COUNTY COURT REPORTERS
 Neshaminy Valley Commons
 2410 Bristol Road
 Bensalem, PA 19020
 215-702-2730
 Court Reporter: Vicki Mengel

Page 2

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 11 A.J. FLUEHR, ESQUIRE
 12 Francis Alexander, LLC
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 14 Media, PA 19063
 15 Francis@francisalexander.com
 16 (For Jason Moorehead)
 17 - - -
 18 ALSO PRESENT:
 19 Jason Moorehead
 20 Anthony Pidgeon, Executive Director of Human
 21 Resources, Allentown SD
 22
 23 INDEX OF WITNESSES
 24
 25

NAME:	DIRECT	CROSS	RD	RC
Marilyn Martinez	19	--	--	--
Jennifer Ramos	75	--	--	--

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1 E X H I B I T S
 2 MOOREHEAD EXHIBITS:
 3 NUMBER: DESCRIPTION: M: A:
 4 101 Promise Neighborhoods agreement 18 18
 5 102 Sequestration law 18 --
 6 104 Subpoena 21 --
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1 HEARING OFFICER SULTANIK: Good afternoon. Today
 2 is Tuesday, December 14, 2021. It is 12:12 p.m., and this
 3 is a continuation of the hearing relating to the charges
 4 brought by the Allentown School District district
 5 administration against Jason Moorehead. I believe that
 6 the school district administration rested its case at the
 7 last hearing and that the employee's case, Mr. Moorehead's
 8 case will be proceeding today, and there was a request on
 9 behalf of the district administration as the result of a
 10 subpoena issued by former -- directed to former acting
 11 superintendent Dr. Martinez to have her testify out of
 12 order as the result of a family issue that she needs to
 13 attend to. Is there any objection to proceeding in that
 14 fashion?
 15 MR. MALOFIY: No, other than addressing certain
 16 preliminary issues to be raised.
 17 HEARING OFFICER SULTANIK: Okay. When you say
 18 addressing certain preliminary issues to be raised, which
 19 preliminary issues do you want to raise and is that before
 20 the testimony of Dr. Martinez?
 21 MR. MALOFIY: Yes, briefly.
 22 HEARING OFFICER SULTANIK: Okay. Please raise
 23 them.
 24 MR. MALOFIY: I think one is the authority of the
 25 hearing officer. I know that -- one, that Fox Rothschild

1 was engaged as solicitor on June 23, 2021. We have that
2 letter, which you did provide. Secondly, we did
3 receive the e-mail communication from you November 19,
4 2021 where it says that you made it clear that Fox
5 Rothschild represents the district in its capacity as
6 solicitor. However, in the context of this particular
7 hearing, you indicated you're representing the interests
8 of the board and King Spry is representing the interests
9 of the administration. The last hearing, there was a
10 Mr. Haaz that was here, and my understanding is that only
11 you were authorized and had authority to be the solicitor.
12 And our concern was the bias that we felt was clearly
13 shown, but you had ruled otherwise.

14 We did ask for the actual minutes or the agenda
15 which authorized your firm or you or Mr. Haaz, if there's
16 two hearing officers, which I thought was very unusual,
17 where there was a minutes or an agenda to that effect.
18 That was not produced. However, we were able to get a
19 copy of Thursday, November 18, 2021. The board of
20 directors submit the following for discussion and action.
21 There was a motion to ratify the appointment of Jeffrey T.
22 Sultanik, Esquire at Fox Rothschild to be the board
23 appointed hearing officer with respect to the charge of
24 dismissal filed by Allentown School District
25 administration relating to Mr. Moorehead.

1 Now, my understanding is that this is what the
2 board of directors approved, and it was only for you to be
3 the hearing officer, not to have two hearing officers.

4 **HEARING OFFICER SULTANIK:** We're not having two.
5 Let me just make it clear. Mr. Haaz is not here as
6 another hearing officer. He's here to support my work in
7 this proceeding. I will be authorizing the issue in terms
8 of acting as hearing officer.

9 **MR. MALOFIY:** I mean, the concern is that he was
10 making decisions.

11 **HEARING OFFICER SULTANIK:** Ultimately, the
12 decisions are either made or ratified by me.

13 **MR. MALOFIY:** Well, it wasn't authorized by the
14 board. That's my concern. So again, we're just putting
15 this as part of record and --

16 **HEARING OFFICER SULTANIK:** Duly noted.

17 **MR. MALOFIY:** And we just wanted to make that as
18 part of the record that we object. But for purposes of
19 bias and also fairness -- fairness and also authority.
20 But with that being said, let me move to my second
21 point -- and also conflict, excuse me. But a second point
22 is the issue of bias that we have here. The concern is
23 that we have asked for many subpoenas to be issued. The
24 only subpoenas that were issued to were subpoenas to the
25 administration, not any subpoenas to the board of

1 directors or the school board -- excuse me. The school
2 board is -- you represent the school board, and they're
3 not here today. None of them are seated. Additionally,
4 although you represent the school board, no subpoenas were
5 issued for the school board.

6 **HEARING OFFICER SULTANIK:** That's right.

7 **MR. MALOFIY:** It seems to -- it drips with
8 insincerity that people that were involved in spinning up
9 the community against Mr. Moorehead, you represent, but
10 you're also stating that you're here as a fair and
11 impartial hearing officer when you've shielded, isolated,
12 protected those that you represent here today. On the one
13 hand, you wear the hat as the attorney for the board
14 issuing no subpoenas to that effect, and then you also
15 wanna cast judgment. And the issue is that there is
16 tremendous bias of those members of the board, including
17 the fact that Promise Neighborhoods was deeply involved
18 and was instrumental --

19 **HEARING OFFICER SULTANIK:** Who was deeply
20 involved?

21 **MR. MALOFIY:** Promise Neighborhoods was deeply
22 involved and instrumental in spinning off the community
23 against Mr. Moorehead. Promise Neighborhoods even put out
24 Facebook posts --

25 **HEARING OFFICER SULTANIK:** For my benefit, who is

1 or what is Thomas Neighborhood?

2 **MR. MALOFIY:** Promise. Promise Neighborhoods has
3 an agreement with the Allentown School District that --
4 it's a community-based organization that has access and
5 actually has influence in actions related to the school
6 district by relying upon each other to I guess have a more
7 complete union with the community and the district.
8 That's my understanding of it. If you want --

9 **HEARING OFFICER SULTANIK:** You can -- you can put
10 evidence of record on that issue. I -- I don't have any
11 evidence of record regarding Promise Neighborhood or
12 anything else. If you want to establish your case of bias
13 in your case right now.

14 **MR. MALOFIY:** We did submit documents and also a
15 brief on this issue and documents. I'm not sure if you
16 had read them.

17 **HEARING OFFICER SULTANIK:** I'll be honest with
18 you. I did not review carefully the documents for Promise
19 Neighborhood. If you're going to have testimony on
20 Promise Neighborhood, you can certainly have a right to
21 evoke testimony on that issue subject to any objections
22 from the district administration.

23 **MR. FREUND:** I will object to Promise
24 Neighborhoods. I don't know who they are, and I have no
25 reason to believe that they played any part of the

1 administration's decision to order Mr. Moorehead back to
2 work or his refusal to return to work.

3 **MR. MALOFIY:** The difficulty that we're having is
4 that I don't understand how you can overrule the subpoenas
5 to Lisa Conover and D Harris who were instrumental in
6 Promise Neighborhoods spinning up the community against
7 Mr. Moorehead if you didn't even read the document that
8 supported our justification for why the subpoenas was
9 necessary.

10 **HEARING OFFICER SULTANIK:** I am -- I am
11 struggling, admittedly, with the issue of your case as to
12 whether or not the community is against Mr. Moorehead or
13 not. And let's assume for a moment you are correct that
14 this Promise Neighborhood group did create some animosity
15 to Mr. Moorehead. Am I also correct that Mr. Moorehead
16 from what I've read did post certain items on Facebook
17 that could be viewed to be inflammatory and that could
18 also cause the neighborhood or neighborhoods in the
19 community to be against Mr. Moorehead? So I'm struggling
20 with how you are going to be able to prove in your case
21 that the danger to come back to work was due to the
22 Promise Neighborhood as you've now explained it versus
23 Mr. Moorehead's own postings through social media.

24 **MR. MALOFIY:** I can appreciate your statements.
25 However, I think that the serious issue is that the

1 subpoenas and the attached documents and the briefs fully
2 support that there is a clear, presence and real bias of
3 the board, including Lisa Conover and Phoebe Harris and
4 that they were engaged and spun off the community.

5 **HEARING OFFICER SULTANIK:** They were engaged?
6 Board members were engaged?

7 **MR. MALOFIY:** In spinning off the community
8 'cause they're a part of Promise Neighborhoods.

9 **HEARING OFFICER SULTANIK:** When you say engaged,
10 do you mean they were paid to do this or they were acting
11 to do this?

12 **MR. MALOFIY:** What I mean when I say they were
13 engaged, I mean, they were active in spinning off the
14 community, starting petitions, calling for members of the
15 community to come and speak out against Mr. Moorehead,
16 calling him a racist, a supremacist, a wolf that preys
17 upon our children. Those types of things spin up the
18 community, which they then had many people at the board
19 that were supported by Lisa Conover and Phoebe Harris, who
20 are not here today. And they know that they were deeply
21 involved was not only Promise Neighborhoods, but also the
22 fact that Lisa Conover specifically was a board member of
23 Promise Neighborhoods as well as the Allentown School
24 District here, and that's the issue that I see. We made
25 this very clear.

1 The other issue that it seems that after we've
2 called this out and made an issue with the subpoena and
3 further reason why she should be here today and why that
4 subpoena should be issued, that she was then I guess wiped
5 away from the board between the last hearing and this
6 hearing of Promise Neighborhoods. So now --

7 **HEARING OFFICER SULTANIK:** Who was -- who was --

8 **MR. MALOFIY:** Lisa Conover. She was listed as a
9 board member of Promise Neighborhoods.

10 **HEARING OFFICER SULTANIK:** There is no Susan
11 Conover.

12 **MR. MALOFIY:** Lisa Conover.

13 **HEARING OFFICER SULTANIK:** And just so you know
14 that currently, Ms. Harris is technically not a board
15 member of the district, as she has not been officially
16 seated following a situation in Lehigh County where they
17 have not issued certificates of election until now, so she
18 technically is not a board member until the board has a
19 reorganization meeting.

20 **MR. MALOFIY:** Whether or not she's not a board
21 member now, I can't comment to that because to me, my
22 thought was that she resigned. Maybe I'm mistaken. Am I
23 mistaken?

24 **HEARING OFFICER SULTANIK:** Phoebe Harris has not
25 resigned. We were waiting election results from the

1 county, which is currently subject to litigation. But
2 right now, Phoebe Harris is technically not a board member
3 in the district.

4 **MR. MALOFIY:** Regardless, the fact that she was
5 involved at all points in time with the Moorehead matter
6 is significant because that shows clear bias from our
7 perspective. Notwithstanding that, we also have
8 Change.org petitions also that were promoted by these
9 individuals. And we think based upon that issue of bias
10 and the issue that Phoebe Harris and Lisa Conover were
11 instrumental in spinning up the community against
12 Mr. Moorehead that their subpoenas are relevant. The fact
13 that you report the board, but you issued no subpoenas for
14 the board and the board is not even here and present to
15 hear what's going on here I think also is dripping with
16 insincerity, and those are my statements in regards to
17 that matter.

18 **HEARING OFFICER SULTANIK:** Those statements are
19 preserved for the record. It has not changed my
20 determinations with respect to the subpoenas. Please
21 proceed with your case.

22 **MR. MALOFIY:** As the sequestration is sort of
23 Evidence 101, whether it's criminal, civil or even
24 administrative hearing that witnesses should not be able
25 to hear the other witnesses' testimony to then piggy back

1 off on them and not have fair, impartial and accurate
2 testimony, which are not -- which is not infiltrated by
3 the thoughts and memories of others, which is version or
4 organic rather than witnesses acting as parrots as they
5 hear the testimony of others. We did have -- we did raise
6 that issue of sequestration before. I do have just some
7 black letter law to submit to the hearing officer.
8 **HEARING OFFICER SULTANIK:** That's why -- please
9 submit it to the administration so they have an
10 opportunity. They may agree to sequestration, as far as
11 I'm concerned.
12 **MR. MALOFIY:** May I approach?
13 **HEARING OFFICER SULTANIK:** Yes.
14 **MR. MALOFIY:** Thank you.
15 **HEARING OFFICER SULTANIK:** Now, in terms of
16 sequestration as a practical matter, the administration is
17 allowed to have a party present throughout the proceeding,
18 and I believe they have designated Mr. Pidgeon to be in
19 that capacity or --
20 **MR. TAYLOR:** Yes, Mr. Pidgeon.
21 **HEARING OFFICER SULTANIK:** And so the only other
22 witness that I'm -- potential witness that I'm aware of in
23 this room is Ms. Ramos, who is the deputy superintendent.
24 **MR. MALOFIY:** Right.
25 **HEARING OFFICER SULTANIK:** So right now, is the

1 nature of the request to sequester Ms. Ramos and only
2 Ms. Ramos because Dr. Martinez is going to be likely taken
3 out of order by way of agreement?
4 **MR. MALOFIY:** That is -- I think that is
5 accurate. The only thing is that Ms. Ramos was not
6 sequestered in hearing Mr. Pidgeon's testimony from last
7 week, so I think that their harm has been visited upon --
8 visited upon and hurt Mr. Moorehead, but -- to have fair,
9 truthful and impartial testimony. With that being said,
10 we would still ask for that to happen at this hearing. We
11 thank the hearing officer for hearing our peace.
12 **MR. TAYLOR:** I would still object, particularly
13 moving forward as tomorrow is Mr. Pidgeon's last day. So
14 in effect, Ms. Ramos becomes the client.
15 **MR. MALOFIY:** Not yet. We're talking about what
16 may or may not happen.
17 **MR. TAYLOR:** Well, we're presuming as the
18 district we have a third day, so she will step into the
19 shoes of the client.
20 **MR. MALOFIY:** I'm talking about right here and
21 now, not what might happen tomorrow.
22 **MR. TAYLOR:** His last day is tomorrow.
23 **MR. MALOFIY:** Well, let it be his last day, and
24 then that --
25 **MR. TAYLOR:** Well, I mean --

1 **MR. MALOFIY:** This is hypothetical --
2 **HEARING OFFICER SULTANIK:** One person at a time.
3 **MR. MALOFIY:** This is hypothetical things that
4 may or may not happen, and we're not here for the
5 possibility of what might happen tomorrow.
6 **MR. TAYLOR:** We're here --
7 **MR. MALOFIY:** We're here for what happened
8 already and what's happening now. And right now, she
9 should be sequestered based upon the hearing officer's
10 recommendation.
11 **MR. TAYLOR:** He's leaving tomorrow.
12 **MR. MALOFIY:** Let him leave tomorrow.
13 **MR. TAYLOR:** He's leaving.
14 **HEARING OFFICER SULTANIK:** Let me ask a very
15 practical question. Following Dr. Martinez's testimony
16 today, is it your intention to call Ms. Ramos today?
17 **MR. MALOFIY:** Yes.
18 **HEARING OFFICER SULTANIK:** So it is today. I
19 will grant sequestration at this point in time to
20 Ms. Ramos, and she could enjoy her time elsewhere in this
21 facility. And at the conclusion of Dr. Martinez's
22 testimony, I would allow Ms. Ramos to come in here. Is
23 that -- I know that's not exactly --
24 **MR. TAYLOR:** We still made our objection, but I
25 understand the rules.

1 **HEARING OFFICER SULTANIK:** Your objection is
2 noted.
3 **MR. TAYLOR:** My concern is that Martinez making
4 testimony that Ms. Ramos won't hear, I'm gonna get
5 Ms. Ramos on the third day to make decisions and she won't
6 have the benefit of hearing the testimony of her witness.
7 **HEARING OFFICER SULTANIK:** Well, there will be a
8 transcript.
9 **MR. TAYLOR:** I understand the ruling. I just
10 still object. I understand the ruling.
11 **HEARING OFFICER SULTANIK:** Okay. Objection
12 overruled. I'm going to allow the sequestration of
13 Ms. Ramos for today only and with the anticipation that
14 she's going to come out and testify at the conclusion of
15 Dr. Martinez's testimony, and somebody will come and get
16 you.
17 **WOMAN:** I'll be in my office.
18 **HEARING OFFICER SULTANIK:** I'm sure you have to
19 enough to do.
20 **MR. MALOFIY:** In regards to the two things I
21 identified earlier, these are the relevant documents. May
22 I approach?
23 **HEARING OFFICER SULTANIK:** Yes. What documents
24 are these?
25 **MR. MALOFIY:** This is the November 18, 2021

1 discussion of action identified by the hearing officer,
2 and I'm not sure where we're at with exhibits or what
3 number we're on or how you want to continue the set.
4 Start fresh today or are we doing something else?
5 **HEARING OFFICER SULTANIK:** I think it should be a
6 continuation of the exhibits.
7 **MR. MALOFIY:** I agree. Do we know where we left
8 off last time? Start out 101? 101 is -- can we make
9 exhibit -- excuse me. Let's make the November 18, 2021
10 board action Exhibit 101, if we could make the August 25,
11 2016 document related to bias which is the agreement
12 between Promise Neighborhoods and the Allentown School
13 District 102? I'm giving a copy to everybody. And just
14 103 will be the sequestration law that I provided to
15 opposing counsel and the hearing officer, and let me
16 provide --
17 **HEARING OFFICER SULTANIK:** We won't admit as a
18 general principal matters of the law. Okay? Now, for the
19 administration, do you have any objections to Exhibit 101
20 or 102?
21 **MR. MALOFIY:** I do think these are all board
22 documents, just to be clear, so I think they're all public
23 documents.
24 **HEARING OFFICER SULTANIK:** They may be public
25 documents, but they may not be -- they have the right to

1 object to those.
2 **MR. MALOFIY:** I understand. I'm just explaining
3 the providence of the documents themselves.
4 **MR. TAYLOR:** We're gonna object. I don't believe
5 either one of these documents are relevant to the issue to
6 be heard and decided today.
7 **HEARING OFFICER SULTANIK:** I'm gonna admit
8 Exhibit 101 because it is relevant whether I've been
9 appointed as hearing officer or not, so I will rule on
10 that. At this point in time, I am not sure about the
11 relevancy of the Promise Neighborhoods of Lehigh valley.
12 That, I think, will require some testimony on the part of
13 Mr. Malofiy to establish the relevancy of that particular
14 matter and whether they're going to be calling any
15 witnesses from Promise Neighborhoods to establish that.
16 So Exhibit 101 is admitted. Exhibit 102 has been marked
17 for identification, but I am not admitting Exhibit 102 at
18 this point in time. It's not without prejudice to your
19 ability to provide foundation evidence for that particular
20 exhibit. Right now, I don't have any such evidence.
21 (Exhibits 101 & 102 were marked for identification.)
22 **HEARING OFFICER SULTANIK:** Are you ready to
23 proceed with witnesses?
24 **MR. MALOFIY:** Yes.
25 **HEARING OFFICER SULTANIK:** Then let the record

1 note that Mr. Haaz is in a supportive capacity has now
2 just joined the hearing. That's H-A-A-Z.
3 **MR. HAAZ:** Good afternoon, everyone. I apologize
4 for being late, had some car trouble.
5 **HEARING OFFICER SULTANIK:** Mr. Malofiy, are you
6 ready?
7 **MR. MALOFIY:** Yeah, ready.
8 **HEARING OFFICER SULTANIK:** Would you be calling a
9 witness?
10 **MR. MALOFIY:** Yes. Mrs. or Ms. Martinez?
11 **HEARING OFFICER SULTANIK:** Doctor.
12 **MR. MALOFIY:** Dr. Martinez. Thank you.
13 MARILYN MARTINEZ, was called as a witness and
14 after having been first duly sworn, according to law, was
15 examined and testified as follows:
16 -- DIRECT EXAMINATION --
17 **BY MR. MALOFIY:**
18 **Q. Hi. How you doing? Thank you for being here. I**
19 **understand you have some family issues which we're taking**
20 **you first to allow you to go back home, so I appreciate**
21 **your courtesy in being here today.**
22 A. Thank you.
23 **Q. We're here in regards to the Jason Moorehead**
24 **matter. I think you're probably somewhat familiar with**
25 **that. Fair statement?**

1 A. I am.
2 **Q. Dr. Martinez, just to be clear, I represent**
3 **Mr. Moorehead. So does AJ Fluehr here. You were served**
4 **with a subpoena, correct?**
5 A. Yes.
6 **Q. And you were asked to bring certain documents and**
7 **things; isn't that correct?**
8 A. Maybe.
9 **Q. I'm sorry?**
10 **HEARING OFFICER SULTANIK:** If you know.
11 **THE WITNESS:** I -- I don't know.
12 **BY MR. MALOFIY:**
13 **Q. You don't know? Did you have a chance to read**
14 **the subpoena?**
15 A. I read it.
16 **Q. Do you have any documents in your possession or**
17 **control relating to Jason Moorehead?**
18 A. I do not.
19 **Q. And why would that be?**
20 A. I'm no longer -- I'm no longer in this district,
21 so I don't serve as interim. I have no purpose for those
22 documents.
23 **HEARING OFFICER SULTANIK:** I'm having trouble
24 hearing you, Dr. Martinez.
25 **THE WITNESS:** Okay.

1 HEARING OFFICER SULTANIK: What I understand
2 is --
3 THE WITNESS: I'll speak louder.
4 HEARING OFFICER SULTANIK: -- you are no longer
5 in the district --
6 THE WITNESS: No, I'm no longer --
7 HEARING OFFICER SULTANIK: -- or employed by the
8 district --
9 THE WITNESS: I am not.
10 HEARING OFFICER SULTANIK: -- is that correct?
11 THE WITNESS: That is correct.
12 (Exhibit 104 was marked for identification.)
13 BY MR. MALOFIY:
14 Q. I have what I'll mark as 104. I'll hand up to
15 the hearing officer. This is the subpoena for
16 Dr. Martinez. Direct you to the first page, opposing
17 counsel, and also to Dr. Martinez herself.
18 A. Thank you.
19 HEARING OFFICER SULTANIK: This is Thomas Parker.
20 MR. MALOFIY: I'm sorry. This is the wrong one.
21 My apologies. One second. Thank you for that. Let me do
22 this instead, and let me -- let me do this instead so we
23 don't mix up our exhibits here. My apologies. Let me
24 restate. This is the subpoenas that were issued, which
25 would be Exhibit 104. Let the record reflect I'm handing

1 it to the hearing officer and I have one here for --
2 HEARING OFFICER SULTANIK: It should be marked as
3 Exhibit 104. Do you have exhibits for the --
4 MR. MALOFIY: I'm looking for one right now for
5 the witness. One second.
6 HEARING OFFICER SULTANIK: These are all of the
7 exhibits.
8 MR. MALOFIY: These are all of them that were
9 issued, I believe.
10 HEARING OFFICER SULTANIK: All the subpoenas,
11 right?
12 MR. MALOFIY: Right. That way, we don't have to
13 keep on going back and forth. Perhaps it'll make it
14 easier in the long run.
15 MR. FLUEHR: Dr. Martinez is the last one in the
16 packet.
17 HEARING OFFICER SULTANIK: I see.
18 MR. MALOFIY: Give me one second. I need to
19 locate an additional copy. Please let the record reflect
20 I'm handing a copy of this issued subpoena to
21 Dr. Martinez. Excuse me.
22 BY MR. MALOFIY:
23 Q. The first one is your subpoena. That is what
24 we're focused on right now, Dr. Martinez. Do you see
25 here, it says -- well, let me back up.

1 You were served with the first page here of the
2 subpoena, correct?
3 A. I was served with something that looks like this,
4 yes.
5 Q. And it says and bring with you the following, all
6 records and information related to Jason Moorehead from
7 January 5, 2021 to present; including, but not limited to
8 any investigations, communications, communications of law
9 enforcement and recommendations. Do you see that?
10 A. I see it.
11 Q. And do you have any of those documents here
12 today?
13 A. I do not.
14 Q. And what is the reason that you don't have any
15 documents here today?
16 A. I'm no longer employed by this district.
17 Q. Would you have -- even though you're not --
18 excuse me. Even though you're no longer employed by the
19 district, would these be documents you may have in your
20 own e-mail, computer, paperwork or otherwise?
21 A. No.
22 Q. What did you do with the documents relating to
23 Mr. Moorehead when you left the district?
24 A. Any documents, any information remains in the
25 office.

1 Q. When you say remained in the office, what does
2 that mean, exactly? What office.
3 A. It means in the administrative office that I used
4 while I was here.
5 Q. Is the administration office that you used when
6 you were here, is that in this building?
7 A. Yes.
8 Q. Okay. Where would that be? Would that be the
9 office of the superintendent?
10 A. It is.
11 Q. Okay. And to be clear, just to clarify your
12 role, you were part of the administration of Allentown
13 School District for a period of time; is that correct?
14 A. Brief period of time, yes.
15 Q. Can you identify when you were -- is it correct
16 to say interim superintendent?
17 A. Yes.
18 Q. Can you identify the dates when you were interim
19 superintendent of Allentown School District?
20 A. It was the last week of April.
21 Q. The last week of April of 20 --
22 A. 21.
23 Q. '21, correct?
24 A. Yes.
25 Q. Until when?

1 A. I believe the last -- I don't know exactly, but
2 towards the end of July.
3 **Q. The end of July. What was the reason for you**
4 **leaving the district?**
5 A. Those were personal reasons.
6 **Q. Did it have anything to do with -- did it have**
7 **anything to do with school matters when you say personal**
8 **issues or was it outside of school?**
9 A. It had to do with personal outside of school
10 matters.
11 **Q. And nothing to do with the administration or --**
12 A. Absolutely not.
13 **Q. -- Mr. Moorehead matter --**
14 A. No.
15 **Q. -- or anything else, correct? Prior to you**
16 **acting as interim superintendent, who was filling that**
17 **role before you?**
18 A. In this district?
19 **Q. Yeah.**
20 A. It's my understanding Mr. Parker.
21 **Q. So you basically took over after Mr. Parker. Is**
22 **that -- is that a fair statement?**
23 A. It's a fair statement.
24 **Q. After you had left the end of July, was the then**
25 **acting superintendent Jennifer Ramos?**

1 A. Oh, I don't know.
2 **Q. And do you know who the current superintendent**
3 **is?**
4 A. I do not.
5 **Q. So would it be fair to say after the end of July,**
6 **you had -- you weren't really involved with anything that**
7 **occurred as far as the administration, the board or the**
8 **district --**
9 A. That is correct.
10 **Q. -- in Allentown. Fair statement?**
11 A. Fair statement.
12 **Q. To your credit, I believe that you were the**
13 **acting or interim superintendent and authorized -- and**
14 **authorized the I believe it was the July 16th**
15 **determination in part, which said after fully**
16 **investigating your involvement in the events of January 6,**
17 **2021 in Washington, DC, the district has concluded that**
18 **your presence at the January 6th gathering did not violate**
19 **school board policy 419 relating to teacher non-school**
20 **activities. Do you remember that?**
21 A. Vaguely, but --
22 **Q. Let me ask you. What is it that you remember**
23 **about Jason Moorehead's matter, if anything?**
24 A. The case involved Mr. Moorehead participating in
25 a protest during January the 6th, I think that date is

1 correct, 2021. There was an investigation that was
2 conducted.
3 **Q. Now, when did you become aware of the**
4 **investigation of Mr. Moorehead?**
5 A. Only a couple weeks into my into service. I
6 don't remember exactly.
7 **Q. You said a couple weeks into your -- I didn't**
8 **catch that.**
9 A. Into service, so I don't --
10 **Q. Correct -- I'm sorry if I don't know this fact,**
11 **but the first time you were working with Allentown school**
12 **District, was that in April of 2021 or the last week of**
13 **April 2021 when you became the interim superintendent or**
14 **were you previously part of the district?**
15 A. No.
16 **Q. That was the first time?**
17 A. Yes.
18 **Q. Okay. I don't know that, so thank you for**
19 **clarification. How was the investigation related to**
20 **Mr. Moorehead disclosed to you?**
21 A. Um, through the attorneys.
22 **Q. When you say through the attorneys, who? Which**
23 **attorney?**
24 A. John and Brian Taylor.
25 **Q. And you were there until the end of July,**

1 **correct?**
2 A. I left -- right. I don't remember the exact
3 date.
4 **Q. Right. Some time in July?**
5 A. Yeah.
6 **Q. Do you recall ever having communications with**
7 **Mr. Sultanik?**
8 A. About this case? No.
9 **Q. Yes.**
10 A. No.
11 **Q. Do you recall having any discussions with Fox**
12 **Rothschild about Mr. Moorehead's case?**
13 A. Who? Fox? No.
14 **Q. The law firm.**
15 A. Only those two.
16 **Q. Only those two? All right. While you were here,**
17 **you did have communications with Mr. Sultanik or Fox in**
18 **regards to other matters. Is that a fair statement?**
19 A. That's a fair statement.
20 **Q. But your position or your statement is that it**
21 **had nothing to do with Mr. Moorehead's matter in any way,**
22 **correct?**
23 A. That is correct.
24 **Q. All right. At what point in time did you become**
25 **aware that there was an FBI investigation relating to**

1 **Mr. Moorehead?**
2 A. I -- I don't recall terms of FBI investigations.
3 **Q. At what point -- are you saying that you had no**
4 **knowledge in any way, shape or form that there was any**
5 **kind of FBI inquiry into Mr. Moorehead?**
6 A. I'm saying that I don't remember those details of
7 this investigation.
8 **Q. Understood. Regardless of whether or not you**
9 **remember the details, do you recall the FBI being involved**
10 **in any way, shape or form into the investigation of**
11 **Mr. Moorehead?**
12 **MR. TAYLOR:** Objection. Asked and answered.
13 **MR. MALOFIY:** She said she didn't remember
14 details. I'm not asking for details. I'm asking in any
15 way, shape or form did she have any knowledge whatsoever
16 of --
17 **HEARING OFFICER SULTANIK:** I'm gonna overrule the
18 objection, but she can answer the question if she can
19 understand it.
20 **THE WITNESS:** I don't remember those kind of
21 details, to be honest. It's been some time.
22 **BY MR. MALOFIY:**
23 **Q. Let me just restate the question without the**
24 **objection. You're saying you didn't recall any details**
25 **about the FBI investigation. That's what you testified to**

1 a moment ago. I'm not asking for details. I'm asking for
2 just whether or not you were aware that there was any FBI
3 reference, involvement in regards to Mr. Moorehead in that
4 investigation.
5 A. I don't remember the details of it involving the
6 FBI.
7 **Q. And again, I'm not asking you for the details.**
8 **I'm asking does that ring a bell that there was FBI**
9 **involvement in the investigation of Mr. Moorehead. Yes or**
10 **no?**
11 A. I -- again, whether or not FBI was involved, I
12 don't remember in terms of their involvement.
13 **HEARING OFFICER SULTANIK:** She doesn't remember.
14 You're gonna have to get the information in through
15 another way.
16 **BY MR. MALOFIY:**
17 **Q. How long have you been involved in administration**
18 **work or work with school districts?**
19 A. Quite some time.
20 **Q. Has there been a lot of FBI involvement with**
21 **other districts and students or teachers?**
22 A. No, actually.
23 **Q. Can you remember any particular time that the FBI**
24 **had to inquire as to a teacher that you were overseeing in**
25 **some capacity?**

1 **A. No. I don't remember.**
2 **Q. So if the FBI did have an investigation as to**
3 **Mr. Moorehead and it was in his investigation file, is**
4 **that something you would remember?**
5 A. Not necessarily.
6 **Q. I see. Why is that? It just doesn't seem very**
7 **concerning or --**
8 A. Only because I'm no longer in this district, so
9 it's not at the forefront of my brain.
10 **Q. I see. So what would help refresh your**
11 **recollection as to whether or not there was an FBI**
12 **investigation as to Mr. Moorehead? How about the personal**
13 **file? Do you remember the personal file about**
14 **Mr. Moorehead, the private file --**
15 A. No.
16 **Q. -- that Mr. Pidgeon had secret in his desk?**
17 A. Oh, I'm not aware of that at all.
18 **Q. Did you have a file in regards to**
19 **Mr. Moorehead --**
20 A. Yes.
21 **Q. -- at one point in time that related to the**
22 **investigation --**
23 A. No.
24 **Q. -- by the attorneys or by others?**
25 A. No.

1 **Q. You didn't?**
2 A. No, I did not.
3 **Q. Huh? Are you telling me that as the interim**
4 **superintendent, you were not provided the secret HR file**
5 **that Mr. Pidgeon had in regards to Mr. Moorehead that had**
6 **information regarding the investigation, about 300 pages?**
7 A. I'm saying that I was not aware of a secret file
8 by Mr. Pidgeon.
9 **Q. Did you have an investigation file in regards to**
10 **Mr. Moorehead at any point in time?**
11 A. I had the information that was provided to me by
12 the attorneys.
13 **Q. And what did that contain?**
14 A. Lots of paper.
15 **Q. What was in there? Did you look at it?**
16 A. I did look at it.
17 **Q. What did you determine?**
18 A. The recommendation that you -- that was
19 referenced.
20 **Q. That he did nothing wrong, correct?**
21 **Mr. Moorehead did nothing wrong?**
22 A. I don't recall exactly what's on my
23 recommendation, but there was a recommendation to --
24 **Q. Did you draft the recommendation or did someone**
25 **else?**

1 A. I worked with the attorneys.
2 **Q. The attorneys did?**
3 A. I worked with the attorneys.
4 **Q. I see. If you look at that file right now, you**
5 **could tell me whether or not there was any investigation**
6 **or any inquiry by the FBI, correct? It would refresh your**
7 **recollection, correct?**
8 A. No, not necessary, not just by glancing at it.
9 **Q. If you took a moment to look at it, the file that**
10 **you haven't looked at for some time, six months or so, it**
11 **might help allow you remember whether or not the FBI was**
12 **involved in some way, shape or form, correct?**
13 **MR. TAYLOR:** Objection. She just asked and
14 answered that question.
15 **HEARING OFFICER SULTANIK:** You're gonna have to
16 speak up, Mr. Taylor.
17 **MR. TAYLOR:** Objection. Asked and answered.
18 She's answered that question. It's the same question over
19 again. It's her recollection.
20 **MR. MALOFIY:** I think at this point, she's saying
21 that she doesn't have in the forefront of her mind. It
22 would be a perfect time for you to refresh her collection
23 by having her look at the record.
24 **HEARING OFFICER SULTANIK:** Perhaps I can help by
25 trying to ask the question.

1 Did you have -- assuming there was an FBI
2 investigation, did that play a part in your recommendation
3 in this matter?
4 **THE WITNESS:** Oh, no.
5 **HEARING OFFICER SULTANIK:** Even assuming there
6 was an FBI investigation, did you rely upon any FBI
7 evidence in making your determination here?
8 **THE WITNESS:** No.
9 **HEARING OFFICER SULTANIK:** Okay.
10 **THE WITNESS:** No.
11 **HEARING OFFICER SULTANIK:** Thank you.
12 **THE WITNESS:** In terms of -- no.
13 **BY MR. MALOFIY:**
14 **Q. Do you remember if there was an FBI**
15 **investigation? If you don't remember whether or not it**
16 **was in the file, how can you remember whether or not there**
17 **was a recommendation or how it factored into your decision**
18 **making?**
19 **MR. TAYLOR:** Objection. Her responses to the
20 hearing officer's questions established the relevancy of
21 the FBI --
22 **MR. MALOFIY:** No, it didn't. It established her
23 failure to remember. That's what it established.
24 **MR. TAYLOR:** It established -- no. She's
25 testified numerous times she doesn't know anything about

1 it and it played -- it would have played no part.
2 **BY MR. MALOFIY:**
3 **Q. Ma'am, does the words Federal Bureau of**
4 **Investigation appear anywhere in Mr. Moorehead's file**
5 **relating to the investigation? Yes or no?**
6 **MR. TAYLOR:** Same objection.
7 **THE WITNESS:** No. I don't remember.
8 **BY MR. MALOFIY:**
9 **Q. You don't remember. So how could you remember**
10 **what the investigation recommendation was or how that**
11 **played a part if you don't even remember if the Federal**
12 **Bureau of Investigation was listed in the investigation at**
13 **all?**
14 A. Sir, I don't remember the actual recommendations.
15 I said to you that I made a recommendation.
16 **Q. And you don't recall whether or not the words**
17 **Federal Bureau of Investigation or FBI was anywhere in**
18 **those 300 pages; is that right?**
19 **MR. TAYLOR:** Objection. Asked and answered once
20 again.
21 **HEARING OFFICER SULTANIK:** And I'm still at a
22 loss what the FBI investigation has to deal with this in
23 one fashion or another because it's my understanding that
24 Dr. Martinez made a recommendation to reinstate
25 Mr. Moorehead.

1 **BY MR. MALOFIY:**
2 **Q. Based upon the FBI investigation in part which**
3 **identified that he did nothing wrong. Correct, ma'am?**
4 **MR. TAYLOR:** Objection. She never testified to
5 that.
6 **BY MR. MALOFIY:**
7 **Q. Ma'am, don't you recall that the FBI said he did**
8 **nothing wrong, that he was not involved in the Capitol**
9 **insurrection?**
10 **MR. TAYLOR:** Objection.
11 **MR. MALOFIY:** Isn't that true?
12 **MR. TAYLOR:** Objection.
13 **HEARING OFFICER SULTANIK:** What's the nature of
14 the objection? We have an objection on the table, so you
15 can --
16 **MR. TAYLOR:** She's -- it's assuming facts that
17 are not in evidence. She has not testified that she
18 recalls some alleged FBI report, she used the alleged FBI
19 report. This is assuming facts that are not there. He's
20 making hypotheticals to explain his client's conduct.
21 **HEARING OFFICER SULTANIK:** I have given you great
22 latitude to ask your questions. But it appears as if the
23 witness cannot remember the underlying nature of that
24 issue, and I'm questioning what relevancy the FBI
25 investigation has to do if it ultimately resulted in his

1 reinstatement. What does that have to do with
2 Mr. Moorehead's return to work and his -- and what are the
3 charges that we are facing today?
4 **MR. MALOFIY:** Well, it would be that is there an
5 ongoing investigation by the FBI or did it close? And you
6 would know that as the interim superintendent, ma'am. And
7 the reason that it's important is that there's a Fifth
8 Amendment issue here. You, Mr. Sultanik, you Mr. King
9 Spry, including Mr. Taylor, should disclose that because
10 you're asking him to return to work which is an unsafe
11 environment if he is still under investigation by the FBI.
12 If he has not been and it's been closed, that should be
13 tendered and disclosed to Mr. Moorehead.
14 **HEARING OFFICER SULTANIK:** Let me ask a question
15 of the witness because it appears as if you can't ask that
16 question.
17 Dr. Martinez, are you aware of any ongoing FBI
18 investigation of Mr. Moorehead?
19 **THE WITNESS:** Absolutely not.
20 **MR. MALOFIY:** She can't remember, she said --
21 **THE WITNESS:** No.
22 **MR. MALOFIY:** -- even the name that appears in
23 his file. How could she testify competently to that
24 issue?
25 **HEARING OFFICER SULTANIK:** I'm just saying. And

1 are you aware of whether or not there's an FBI
2 investigation that is open or closed with respect to
3 Mr. Moorehead?
4 **THE WITNESS:** I'm not aware of any ongoing case,
5 no.
6 **HEARING OFFICER SULTANIK:** The witness is not
7 aware, so you're gonna have to get it in through another
8 way.
9 **MR. MALOFIY:** If there's no ongoing case, then
10 that file is not privileged in any way, shape or form,
11 even with the attorneys and should be tendered
12 immediately. That's the point. If it's a closed
13 investigation, that has to be -- has to be handed over.
14 If it's not closed and it's ongoing and it's secretive and
15 the district is acting as an arm of the FBI, then maybe
16 that investigation is ongoing and we should be privy to
17 it, but we should know if there's an ongoing investigation
18 so he can assert his Fifth Amendment rights to even know
19 whether or not it's there. If it's been closed, which she
20 said she has no idea, then those records come to us right
21 now.
22 **MR. TAYLOR:** Absolutely not.
23 **MR. MALOFIY:** Why not? It's a closed
24 investigation.
25 **MR. TAYLOR:** No, absolutely not.

1 **MR. MALOFIY:** Why?
2 **HEARING OFFICER SULTANIK:** One person at a time,
3 please.
4 **MR. TAYLOR:** To the extent that this
5 investigation report is a reflection of communication
6 between King Spry and their client in our capacity as
7 their solicitor. That relationship continues to this day.
8 That relationship continues by the fact that you filed a
9 writ of summons, and we have been appointed to defend
10 that. That's an ongoing relationship. Our arc is not
11 based upon some investigation being opened or closed.
12 **MR. MALOFIY:** To be clear, the writ of summons
13 you have not entered your appearance on. To be clear,
14 you're not representing individuals in regard to the writ
15 of summons. To be clear --
16 **MR. TAYLOR:** We represent the district.
17 **MR. MALOFIY:** To be clear, if the investigation
18 is closed, he is entitled to know what that investigation
19 said and --
20 **MR. TAYLOR:** The district --
21 **MR. MALOFIY:** -- I think that now would be a
22 perfect time to look at in camera what that file says.
23 Mr. Sultanik, we would ask the hearing officer take a
24 moment to inspect the actual file to determine whether or
25 not this is an open investigation, if it's a closed

1 investigation. Because if it's closed and they clear him,
2 the FBI, then that file is appropriate for this man to
3 have at this time. And to the extent that the FBI was in
4 communication with King Spry or with you, Mr. Taylor,
5 those communications are not privileged in any way, shape
6 or form.
7 **MR. TAYLOR:** That investigation report based upon
8 communication with our client. They are directions.
9 Legal advice was given to them. That exceeds the life of
10 the investigation. That is an ongoing relationship, us
11 giving advice in regards to Mr. Moorehead's employment.
12 **HEARING OFFICER SULTANIK:** I would -- okay. I
13 would agree that ongoing communications between the
14 district administration and the King Spry firm would be
15 protected via attorney client privilege. It is possible
16 that there are items in this file that are not protected
17 by the attorney client privilege, but the only way I can
18 determine that is if we do an in camera inspection of the
19 file to see that.
20 Now, I will tell you I am still at an extreme
21 loss to assert why in this proceeding we need to know
22 about the impact of the FBI investigation. That might be
23 relevant in your writ of summons. It might be relevant in
24 another proceeding, but I question any relevancy in this
25 particular proceeding about what the FBI had to do with

1 this, if at all, because he has been reinstated and the
2 like, and you can address your Fifth Amendment privilege
3 argument once again with Mr. Taylor in your writ of
4 summons action that they've been appointed to defend on
5 behalf of the district by the insurance carrier.

6 **MR. MALOFIY:** If the investigations are closed,
7 he's entitled to that file. If there's any
8 communications --

9 **HEARING OFFICER SULTANIK:** But that may not have
10 anything to do with this proceeding.

11 **MR. MALOFIY:** I'm gonna answer. If the man is
12 being placed or his rights, his rights afforded by the
13 Constitution are harmed in any way, shape or form and that
14 that would be failure to identify whether or not there's
15 an ongoing or active criminal investigation, he cannot
16 return to work.

17 **HEARING OFFICER SULTANIK:** Why?

18 **MR. MALOFIY:** And we made that very clear.

19 **HEARING OFFICER SULTANIK:** Why?

20 **MR. MALOFIY:** You want him to return to work or a
21 place where he's accused of being a hate monger, accused
22 of being a white supremacist, accused of being a racist,
23 accused him of breaching the Capitol.

24 **HEARING OFFICER SULTANIK:** What does that have
25 to --

1 **MR. MALOFIY:** Hold on, and then not to correct
2 that record is unsafe, number one. Number two, he has a
3 Fifth Amendment right and a Fourth Amendment right. Our
4 understanding is that the investigation of the computer
5 devices was done with the help and aide of the FBI. Now,
6 if the FBI is involved in investigating this man's
7 personal devices, and if everyone's sitting here
8 pretending it didn't happen, I think there's dire
9 consequence for everyone in the room. And what we know is
10 there is an FBI request. And when that comes out, it's
11 gonna put a lot of people on the butcher block here
12 because when that investigation comes out and what's heard
13 in that investigation, whether it's closed or open, has
14 dire consequences for Mr. Moorehead.

15 And if you're asking him to go back into a lion's
16 den where they're not even -- they're playing very coy
17 here whether or not there's any potential risk to him, his
18 family or his constitutional rights that he has an
19 absolute right to know if there's an ongoing
20 investigation. And if it's closed, then he's entitled to
21 his file. Whatever communications are particular between
22 King Spry and his client is one thing, but not
23 investigation reports, documents from the FBI, reports
24 from the FBI or those things that make up that file.

25 **HEARING OFFICER SULTANIK:** Mr. Malofiy, I have a

1 question for you. Let's assume for a moment there is a
2 FBI file, which I don't know if it exists or doesn't exist
3 and let's assume for a moment the FBI investigation is
4 closed. Let's assume that for the purposes of this
5 discussion. Will your client come back to work under
6 those circumstances?

7 **MR. MALOFIY:** We need to see the file to make a
8 determination.

9 **HEARING OFFICER SULTANIK:** I'm just saying
10 hypothetically if that is closed, will your client come
11 back to work?

12 **MR. MALOFIY:** That's not -- your hypothetical
13 question is not appropriate for today.

14 **HEARING OFFICER SULTANIK:** Yes, it is.

15 **MR. MALOFIY:** The question is --

16 **HEARING OFFICER SULTANIK:** It is.

17 **MR. MALOFIY:** -- is there an investigation by the
18 FBI?

19 **HEARING OFFICER SULTANIK:** It's not for you to
20 determine what's appropriate or not. I am telling you
21 under the circumstances if that FBI investigation is
22 closed, will Mr. Moorehead come back to work?

23 **MR. MALOFIY:** We have no idea what ongoing
24 investigation is occurring, so we have to see the file
25 first to make that determination.

1 **HEARING OFFICER SULTANIK:** Okay.

2 **MR. MALOFIY:** Hiding the ball from Mr. Moorehead
3 for a year and lying to him for a year and having everyone
4 stand up and pretend that they don't know about the
5 investigation file or that the FBI was involved or talking
6 to multiple agents is just the whole room drips with
7 insincerity and disgust. That's what it is.

8 **MR. TAYLOR:** But there's a forum for that. You
9 have federal court --

10 **MR. MALOFIY:** Yeah. It's called provide the
11 file.

12 **MR. TAYLOR:** You can avail yourself of that
13 forum. You've already done so. You can continue to get
14 whatever you want through that forum. We're here to
15 discuss his employment with the --

16 **MR. MALOFIY:** The forum was a subpoena to the
17 FBI, which you objected to.

18 **MR. TAYLOR:** There was a --

19 **MR. MALOFIY:** That's what it was.

20 **MR. TAYLOR:** It's irrelevant to what we're here
21 today.

22 **HEARING OFFICER SULTANIK:** Okay. Let many ask
23 the question. If the FBI investigation is still ongoing,
24 will your client come back to work?

25 **MR. MALOFIY:** He cannot come back to work if

1 there's an ongoing investigation, and everyone in this
2 room knows it 'cause they're barred attorneys. Not
3 everyone, but the barred attorneys do. They've gone
4 through some basic -- you understand the Constitution.
5 **HEARING OFFICER SULTANIK:** So you're telling me
6 that as a matter of employment law as long as employee is
7 under investigation by the Federal Bureau of
8 Investigation, they have the right not to return to work?
9 **MR. MALOFIY:** I'm telling you you're trying to
10 talk about hypothetical, what may or may not. You know
11 the law. I know the law.
12 **MR. TAYLOR:** Where's the case for that? I'd love
13 to see that case.
14 **MR. MALOFIY:** Mr. Taylor, do you know -- was the
15 FBI involved? Yes or no, Mr. Taylor?
16 **MR. TAYLOR:** I'm not --
17 **MR. MALOFIY:** Mr. Taylor, was the FBI involved?
18 **MR. TAYLOR:** I am not answering your question.
19 **MR. MALOFIY:** Of course you're not gonna answer.
20 **MR. TAYLOR:** I'm not answering --
21 **MR. MALOFIY:** You know the answer to that
22 question, sir, and you're not gonna put yourself in the
23 butcher block like that by giving an affirmative statement
24 'cause you know what happened.
25 **MR. TAYLOR:** Yeah.

1 **MR. MALOFIY:** Yeah, the silence is sickening.
2 **MR. TAYLOR:** Do you have a question?
3 **MR. MALOFIY:** Yeah.
4 **MR. TAYLOR:** You have a question?
5 **MR. MALOFIY:** Was the FBI involved, Mr. Taylor?
6 **MR. TAYLOR:** I'm not answering your question.
7 **MR. MALOFIY:** Okay. Yeah. The silence is
8 sickening.
9 **MR. TAYLOR:** I'm not answering your questions.
10 **HEARING OFFICER SULTANIK:** Okay. Let me -- let's
11 move forward. Now, I will reserve the right. We will
12 break at an appropriate time. I would like to see if
13 Dr. Martinez's testimony can be concluded because of her
14 personal needs first. So do you have any other questions
15 that do not relate to this particular line of inquiry
16 before we potentially could do an in camera inspection?
17 **BY MR. MALOFIY:**
18 **Q. When was the last time you spoke to Mr. Taylor,**
19 **Mr. Freund or anyone from King Spry?**
20 **MR. TAYLOR:** Objection.
21 **MR. MALOFIY:** Why?
22 **MR. TAYLOR:** I'm not sure where this is going.
23 **MR. MALOFIY:** I know you don't. You don't know
24 where anything's going.
25 **HEARING OFFICER SULTANIK:** He can ask when's the

1 last time you spoke other than of course in this context
2 of this proceeding.
3 **MR. MALOFIY:** Whoa.
4 **HEARING OFFICER SULTANIK:** He just -- she just
5 talked. She said hello to him when she came in.
6 **MR. MALOFIY:** What's wrong with that? Is there
7 something privileged about saying hello?
8 **BY MR. MALOFIY:**
9 **Q. Besides saying hello to Mr. Taylor earlier on or**
10 **Mr. Freund, when was the last time you spoke to the firm**
11 **King Spry?**
12 **A.** I don't remember the date per se, but it was a
13 couple days after I got the subpoena.
14 **Q. What did they say to you, ma'am?**
15 **MR. TAYLOR:** Objection.
16 **MR. MALOFIY:** Not privileged. You don't
17 represent her.
18 **MR. TAYLOR:** Yeah, I am.
19 **HEARING OFFICER SULTANIK:** It's not in the
20 individual representation. As an officer of the district,
21 the attorney client privilege extends.
22 **MR. MALOFIY:** She's not an officer.
23 **HEARING OFFICER SULTANIK:** Yes, it does. It
24 extends to officers of the organization if he spoke with
25 them. So I disagree with you and I'm going to sustain the

1 objection.
2 **BY MR. MALOFIY:**
3 **Q. Ma'am, who did you speak to first?**
4 **A.** I only spoke to Mr. Taylor.
5 **Q. How long did you speak to him for?**
6 **A.** Less than five minutes.
7 **Q. And what was it in regards to?**
8 **MR. TAYLOR:** Objection.
9 **HEARING OFFICER SULTANIK:** Sustained.
10 **BY MR. MALOFIY:**
11 **Q. Are you an officer currently of the district?**
12 **Yes or no?**
13 **A.** No.
14 **Q. Are you an employee of the district? Yes or no?**
15 **A.** No.
16 **Q. When did your employment and your officership**
17 **end?**
18 **A.** Some point in July.
19 **Q. So since July, did you speak to anyone at King**
20 **Spry other than Mr. Taylor who you just identified?**
21 **A.** I don't think so.
22 **Q. Is there any -- do you have any -- I know -- it**
23 **seems like there's a lot of things you're not able to**
24 **remember. Do you have any issue with your memory or your**
25 **judgment that prevents you from remembering facts in the**

1 past? Is there anything that's an ailment?
2 A. It's pretty offensive.
3 **Q. No. It's offensive that something like the FBI**
4 **in Mr. Moorehead's file you can't remember.**
5 **MR. TAYLOR:** Is that a question?
6 **HEARING OFFICER SULTANIK:** That presumes a fact
7 that's not in evidence.
8 **BY MR. MALOFIY:**
9 **Q. I just need to know this because I'm not sure if**
10 **you were told to misremember or to not remember by**
11 **opposing counsel here.**
12 **MR. TAYLOR:** Objection. That is an implication.
13 If you have something you wanna file against my company,
14 do it.
15 **MR. MALOFIY:** I will.
16 **MR. TAYLOR:** Go ahead. Do it. I'm waiting.
17 **MR. MALOFIY:** Your silence speaks volumes. It's
18 sickening.
19 **MR. TAYLOR:** File it. Go ahead. I dare you.
20 **MR. MALOFIY:** All right, tough guy. Come on.
21 **MR. TAYLOR:** Yeah. I'm waiting.
22 **MR. MALOFIY:** Pipe down.
23 **BY MR. MALOFIY:**
24 **Q. Now, question for you. Is there anything that**
25 **affects your memory or judgment here today?**

1 **HEARING OFFICER SULTANIK:** She --
2 **MR. TAYLOR:** Asked and answered.
3 **HEARING OFFICER SULTANIK:** She answered that
4 already.
5 **MR. MALOFIY:** She said it was offensive. I'm
6 asking if there is anything that we should know about.
7 **THE WITNESS:** No.
8 **MR. MALOFIY:** Okay. Thank you. What rule,
9 statute that you're referring to that says that someone
10 who is no longer an employee of the district, is no longer
11 an officer, that --
12 **HEARING OFFICER SULTANIK:** I'm not gonna lecture
13 you regarding attorney client privilege on organizations.
14 I suggest you do some research on your own.
15 **MR. MALOFIY:** So you can't identify what statute
16 you're relying on --
17 **HEARING OFFICER SULTANIK:** I ruled on the issue
18 already, Mr. Malofiy. Please continue with your cross-
19 examination.
20 **MR. MALOFIY:** We would clearly object and we
21 think it's improper to instruct a witness not to testify
22 as to communications which are not privileged.
23 **HEARING OFFICER SULTANIK:** It's of record.
24 **MR. MALOFIY:** Fair enough. Hold on one second.
25 **BY MR. MALOFIY:**

1 **Q. Ma'am, are you familiar with Promise**
2 **Neighborhoods?**
3 A. Not really, no.
4 **Q. Are you familiar with Power?**
5 A. No.
6 **Q. Power Lehigh?**
7 A. No.
8 **Q. Who did you communicate or deal with when you**
9 **dealt with the board here an Allentown School District?**
10 **Was there anyone in particular?**
11 A. You mean the board president?
12 **Q. Excuse me?**
13 A. The board president?
14 **Q. Are you -- is that what you're saying, the board**
15 **president you spoke to?**
16 A. The board president's who I worked with.
17 **Q. That's it? Who's that, Nancy Well?**
18 A. Yes.
19 **Q. Do you recall if any law enforcement was involved**
20 **in the investigation of Mr. Moorehead or you just have an**
21 **absolute blank in your memory?**
22 A. I don't recall.
23 **Q. I'm gonna hand it out. We used this last time.**
24 **But rather than having to keep on presenting it, I will**
25 **put together the packet of documents. Here you go. It's**

1 **gonna --**
2 **HEARING OFFICER SULTANIK:** Is it gonna be marked?
3 **MR. MALOFIY:** It already was. We already used it
4 at the last hearing. But rather than shuffling through
5 many different documents, I'm gonna pinpoint the exhibit
6 I'm looking at. It's Bates stamped 52 on the bottom
7 there, should be 50 pages in it.
8 **HEARING OFFICER SULTANIK:** 52?
9 **MR. MALOFIY:** Yes, sir.
10 **HEARING OFFICER SULTANIK:** I see it. This is a
11 July 16th letter, right?
12 **BY MR. MALOFIY:**
13 **Q. Yes. Do you see that, Ms. Martinez?**
14 **Dr. Martinez, I'm sorry.**
15 A. I do.
16 **Q. Do you recall this letter?**
17 A. I do.
18 **Q. Okay. And it's signed by Anthony Pidgeon. Do**
19 **you see that on the second page, 53?**
20 A. It is.
21 **Q. And this letter says Dear Mr. Moorehead, after**
22 **fully investigating your involvement in the events of**
23 **January 6, 2021, Washington, DC, the district has**
24 **concluded that your presence at the January 6th gathering**
25 **did not violate school board policy 419 relating to**

1 teacher non-school activities. Do you see that?
2 A. I do.
3 Q. Do you know what was used to form the basis of
4 that determination?
5 A. The investigation that was conducted.
6 Q. It says after fully investigating your
7 involvement. What did the school or the district --
8 excuse me. What did the district do to fully investigate
9 his involvement?
10 A. I was not present for the -- whatever the
11 district did for his investigation.
12 Q. What did they do?
13 A. Again, I don't know what they did for his
14 investigation.
15 Q. Who's they?
16 A. Whomever.
17 Q. Well, aren't you the superintendent or the
18 interim superintendent? You're the person in charge,
19 right?
20 A. As interim superintendent, I receive the
21 investigation.
22 Q. You did?
23 A. Yeah. It was --
24 Q. So what was done to fully investigate
25 Mr. Moorehead's involvement?

1 A. I think I said to you that there were a lot of
2 papers, so I don't really remember everything that was
3 done.
4 Q. Do you remember anything that was done?
5 A. Not really.
6 Q. Anything?
7 A. Not really.
8 Q. No? Okay. Who did you communicate in regards to
9 the investigation with Mr. Moorehead?
10 A. The attorneys.
11 HEARING OFFICER SULTANIK: She's already
12 testified about that at least four or five different
13 times.
14 BY MR. MALOFIY:
15 Q. Only the attorneys?
16 A. What?
17 Q. Only the attorneys?
18 A. What was your question?
19 Q. Who did you speak to in regards to the
20 investigation of Mr. Moorehead? You said the attorneys,
21 and I'm asking you was it only the attorneys or was there
22 other people?
23 A. The attorneys.
24 Q. Anyone else?
25 A. Um, at some point, Mr. Pidgeon, but I don't

1 remember at what point.
2 Q. How did you communicate with Mr. Pidgeon?
3 A. Verbally.
4 Q. Verbally? Did you have any e-mail
5 communications, things of that nature?
6 A. I don't recall.
7 Q. Do you remember what, if anything, you discussed
8 in regards to the investigation of Mr. Moorehead?
9 A. What did you just say?
10 Q. Do you recall what, if anything, you discussed in
11 regards to the investigation of Mr. Moorehead?
12 A. Not exactly.
13 MR. TAYLOR: With Mr. Pidgeon?
14 MR. MALOFIY: Yeah.
15 THE WITNESS: No, not exactly, just I remember
16 him just finalizing this memo. That was my --
17 BY MR. MALOFIY:
18 Q. Mr. Pidgeon finalized the memo?
19 A. Yeah, by --
20 Q. How was this letter drafted exactly? Did you
21 take any part in it?
22 A. Mr. Pidgeon wrote the memo.
23 Q. I'm sorry?
24 A. Mr. Pidgeon?
25 Q. Yeah.

1 A. This memo.
2 Q. Yeah.
3 A. It was written by him.
4 Q. Did he write it? Did you write it? Did you have
5 any part in it?
6 A. I worked with the attorneys.
7 Q. You worked with the attorney, and then this came
8 across your desk. Did you have to approve it?
9 A. It was, once shared with the attorneys, then
10 Mr. Pidgeon was able to write the memo.
11 Q. When you say once shared with the attorneys, what
12 do you mean?
13 A. I spoke with the attorneys.
14 Q. Okay. So you spoke to the attorneys. Did they
15 provide you the basic -- the letter that Mr. Pidgeon
16 signed or did you draft it or how did this come about?
17 How was this letter drafted?
18 A. I worked with the attorneys.
19 Q. Do you recall drafting any part of this letter?
20 A. I worked with the attorneys.
21 Q. Can you point to any sentence that you drafted on
22 this letter?
23 A. Again, I worked with the attorney. So no, I
24 don't recall exactly that.
25 Q. After this letter of July 16th was drafted and

1 worked with the attorneys and having Mr. Pidgeon sign, why
2 didn't you notify the community, the teachers and the
3 people involved that the district has concluded that
4 Mr. Moorehead's presence did not violate any school
5 policy? Why didn't you let the community know?
6 A. Are you saying why I didn't let them know?
7 Q. Yeah, why you didn't. Why didn't you publicly
8 let the community, the teachers, the students know that he
9 did nothing wrong?
10 A. Personal matters are not discussed in public.
11 Q. Well, then why was it discussed initially?
12 A. Sir, I can't answer that.
13 Q. Who can answer it?
14 A. I know I can't answer it.
15 Q. You agree that personnel matters should not be
16 discussed in public, right?
17 A. I'm aware that personnel matters are not
18 discussed in public.
19 Q. Did you see any letters from me as
20 Mr. Moorehead's counsel requesting that a public
21 retraction and correction of the misinformation related to
22 Mr. Moorehead be posted and presented to the community,
23 teachers and students?
24 A. That part of your -- say it again.
25 Q. At any point in time do you recall Mr. Moorehead

1 by and through his counsel requesting that the conclusion
2 of the district that he did nothing wrong be shared with
3 the community?
4 A. No, I don't remember that.
5 MR. MALOFIY: One moment with the hearing
6 officer's indulgence.
7 We would ask for a brief recess before we are
8 done with our questioning of Dr. Martinez to look at an in
9 camera view of those -- from the hearing officer an in
10 camera view of the investigation file.
11 HEARING OFFICER SULTANIK: So this would be all
12 of the other questions that you were planning to ask her
13 but for what would be in that file. Now, is there an
14 objection to an in camera inspection?
15 MR. TAYLOR: There is.
16 HEARING OFFICER SULTANIK: What is the nature of
17 that objection?
18 MR. TAYLOR: It's attorney client privileged.
19 HEARING OFFICER SULTANIK: This document was
20 prepared under what circumstances?
21 MR. TAYLOR: It's prepared to the investigation
22 direction of the district, the administration by my firm
23 as solicitor in --
24 THE REPORTER: I could not hear that.
25 MR. TAYLOR: It contained legal analysis and

1 recommendations.
2 HEARING OFFICER SULTANIK: Let me confer for a
3 few minutes, and then we'll decide.
4 MR. MALOFIY: If I may, if there's some parts, if
5 there's attachments and those are not privileged, then
6 they should be disclosed and presented. I'm not asking
7 for communications with their client, and it wasn't
8 prepared in preparation for litigation, especially to the
9 extent clearing him a full investigation. They're saying
10 there's a full investigation. He did nothing wrong. He's
11 entitled to that document, and there's case law that
12 supports that as well.
13 MR. TAYLOR: Again, the litigation being
14 threatened from your letter, so it was prepared in
15 anticipation of litigation. You cannot -- from the
16 district.
17 MR. MALOFIY: Once an investigation has been
18 concluded, it gets turned over to the employee, and that's
19 what the law also indicates.
20 HEARING OFFICER SULTANIK: Okay. In the
21 employment context, once an investigation is completed, it
22 gets turned over to an employee?
23 MR. MALOFIY: If the investigation has concluded,
24 he's entitled to see the actual investigation in regards
25 to that matter that he's involved in, yes.

1 MR. TAYLOR: Absolutely not. There's no case
2 law.
3 MR. MALOFIY: And whatever's not privileged
4 should be turned over. If you're saying everything in
5 there is communication between you and your client, that's
6 one thing.
7 MR. TAYLOR: Yes, absolutely.
8 HEARING OFFICER SULTANIK: Mr. Malofiy, what is
9 you legal authority for the requirement to turn over
10 documentation once an investigation is completed? That's
11 a new one for me.
12 MR. TAYLOR: There is none.
13 MR. MALOFIY: Oh, there is none? Even the FBI,
14 if the investigation is closed, it has to be disclosed.
15 MR. TAYLOR: Give us the authority.
16 MR. MALOFIY: It's called the FOIA request in and
17 of itself.
18 MR. TAYLOR: Give us a case.
19 MR. MALOFIY: If you wanna --
20 MR. TAYLOR: Give us --
21 HEARING OFFICER SULTANIK: There's no -- wait,
22 wait, wait. There may be a right to a FOIA, a Freedom of
23 Information Act request with the FBI that may be existing.
24 But you're saying here, we're talking about the employer
25 and the employer's relationship with Mr. Moorehead and the

1 responsibility of the employer to turn over the results of
2 an investigation to an employee. I'm not aware of any
3 such authority to that effect and I'm asking you for it,
4 if you're asserting it.
5 **MR. MALOFIY:** If there's an ongoing
6 investigation, that's different. If the investigation has
7 closed, he's entitled to it. Now, with that being said,
8 there's also rules that all of us as attorneys are
9 responsible for, and we also have to abide by and follow
10 the United States Constitution. And if this man's in any
11 harm's way, then we're entitled to see that and know that.
12 And if you're concealing that, that's all subject to
13 severe, severe discipline. Now, you authorized the
14 subpoena, Mr. Sultanik, and you said that an in camera
15 review of those documents would be allowed and the
16 parts -- and a privilege document --
17 **HEARING OFFICER SULTANIK:** I'm just asking a
18 question right now. You're making an assertion. You made
19 a legal argument on the record stating that there's an
20 employer obligation to turn over the results of an
21 investigation.
22 **MR. MALOFIY:** If it's closed.
23 **HEARING OFFICER SULTANIK:** Not withstanding all
24 the words you stated, you have not given me any legal
25 authority.

1 **MR. MALOFIY:** Okay. Well, if you didn't hear the
2 United States Constitution and the Fifth Amendment right,
3 then maybe you can't hear what I'm saying.
4 **HEARING OFFICER SULTANIK:** Well --
5 **MR. MALOFIY:** And if you don't understand the
6 rules of professional responsibility that are incumbent
7 upon all of us as attorneys, then perhaps --
8 **HEARING OFFICER SULTANIK:** But that's not an
9 issue of an attorney. You're saying that was an employer
10 obligation to turn it over.
11 **MR. MALOFIY:** Yes, it is.
12 **HEARING OFFICER SULTANIK:** The Rules of
13 Professional Conduct don't apply to school district
14 administration, the best I understand.
15 **MR. MALOFIY:** Well, I would agree that nothing
16 applies in this room, that it's dripping with insincerity,
17 that you're conflicted in representing the -- as a
18 solicitor for the direct and also representing the board
19 and also sharing the hat as fair and impartial when we
20 know it's not. We have everyone here, the attorneys, the
21 barred attorneys pretending that there's not a Fifth
22 Amendment right, there's not a Fourth Amendment right,
23 there's not a First Amendment right, there's not a
24 Fourteenth Amendment right, but there is. And we can
25 pretend this little -- pretend little scenario here that

1 nothing applies and there's no laws, but I would disagree
2 with that, and I think --
3 **HEARING OFFICER SULTANIK:** I know you --
4 **MR. MALOFIY:** -- it's offensive.
5 **HEARING OFFICER SULTANIK:** I know you would,
6 Mr. Malofiy, and I have yet to hear a case cited. We're
7 going to -- I'm going to confer right now, and we'll
8 decide about based upon that question.
9 **MR. MALOFIY:** To be clear, we asked for a
10 privilege log. It was not produced.
11 **MR. TAYLOR:** Because the whole --
12 **MR. MALOFIY:** It was ordered.
13 **MR. TAYLOR:** The whole report --
14 **MR. MALOFIY:** It was ordered.
15 **MR. TAYLOR:** The entire report is privileged.
16 **MR. MALOFIY:** You're on the record --
17 **MR. TAYLOR:** You haven't established --
18 **MR. MALOFIY:** When that comes out that it's
19 not --
20 **MR. TAYLOR:** -- produced --
21 **MR. MALOFIY:** -- you're gonna be in trouble.
22 **MR. TAYLOR:** Do you have some law produced?
23 Now's the time.
24 **MR. MALOFIY:** You're gonna be in trouble --
25 **MR. TAYLOR:** Now's the time --

1 **MR. MALOFIY:** -- when you misrepresent what it
2 is.
3 **MR. TAYLOR:** Now is the time. Do you have
4 something to produce?
5 **MR. MALOFIY:** You're gonna be in trouble when it
6 comes out --
7 **MR. TAYLOR:** You don't.
8 **MR. MALOFIY:** -- and it's not all --
9 **HEARING OFFICER SULTANIK:** Okay. Stop. Okay.
10 We heard you. We're gonna take a 15 minute recess anyway,
11 and --
12 **MR. MALOFIY:** Do you have it? Do you have the
13 report?
14 **HEARING OFFICER SULTANIK:** I don't have their
15 document right now. I'm gonna first decide whether we're
16 gonna do an in camera inspection, and then I have to go
17 and assert to the board.
18 **MR. MALOFIY:** You ordered it already. You said
19 that this was gonna happen.
20 **HEARING OFFICER SULTANIK:** Mr. Malofiy, can I
21 have an opportunity --
22 **MR. MALOFIY:** Yes.
23 **HEARING OFFICER SULTANIK:** -- to do that? I
24 heard you already.
25 **MR. MALOFIY:** All right. Yes, sir.

1 **HEARING OFFICER SULTANIK:** We're off the record.
2 (A recess was held.)
3 **HEARING OFFICER SULTANIK:** We're back on the
4 record. The time is 1:38 on December 14, 2021. We just
5 had a brief recess to consider the request of
6 Mr. Moorehead's counsel to do an in camera inspection of
7 the district administration's work file and investigative
8 file that was performed by King Spry as counsel for the
9 district administration in conjunction with this matter.
10 I want to preface my comments by saying I do not believe
11 that there is anything that could be present in this file
12 that bears any relevancy to the proceeding for which we
13 have been engaged to be the hearing officer in this
14 matter. And though I understand the scope of that
15 engagement is not necessarily agreed to by Mr. Moorehead's
16 counsel, I do not believe that anything in an
17 investigation of Mr. Moorehead which ultimately resulted
18 in his reinstatement as an employee bears any relevancy to
19 this process, nor do I believe that anything in an FBI
20 investigation would bear any relevancy on Mr. Moorehead's
21 ability to return to work.
22 That being said, we would do a brief in camera
23 inspection of this file to see whether or not there are
24 any legal opinions interspersed with the investigation
25 performed by King Spry. Clearly, if there are legal

1 recommendations and the like associated with that, I'm
2 going to rule that that would be attorney client privilege
3 because that is of critical importance under the process.
4 So with that in mind, I would request that the privilege
5 file be turned over for the purposes of an in camera
6 inspection. But I wanna caution Mr. Moorehead's counsel
7 to say that for the life of me, I don't see the relevancy
8 in the proceeding.
9 **MR. TAYLOR:** We are not gonna produce it.
10 **HEARING OFFICER SULTANIK:** Okay. If you're not
11 going to produce it --
12 **MR. TAYLOR:** I just think that the hearing
13 officer's analysis establishes the complete irrelevancy of
14 the document, coupled with the fact that we are now
15 engaged in litigation where that document will most likely
16 be at the center of communication. I don't wanna be in a
17 situation where I waive privilege to that document in a
18 court filing based upon an administrative procedure here
19 where it's completely irrelevant to the ultimate decision
20 and issue to be decided here today.
21 **HEARING OFFICER SULTANIK:** The issue is, however,
22 I don't believe you waived the right to the document
23 because I could do an in camera review of the document and
24 deem it to be privileged and then, it's not produced and
25 it doesn't even go in the hands of Mr. Malofiy under those

1 circumstances, you know, so --
2 **MR. TAYLOR:** I'm still not gonna produce it.
3 **HEARING OFFICER SULTANIK:** Okay. Let me just
4 confer with Mr. Haaz.
5 **MR. MALOFIY:** Sure.
6 **HEARING OFFICER SULTANIK:** Unless somebody has
7 anything else to the contrary, I don't have the power as
8 the hearing officer to compel the production of that
9 issue. So, you know, I think we have to continue with
10 the -- we have to go on with the hearing.
11 **MR. MALOFIY:** Just to put it simply, we have good
12 reason and I think the failure to comply with the hearing
13 officer's instruction and order is clear indication that
14 the protestations that we're making here are true. And I
15 think that there's a lot -- there's gonna be a lot of harm
16 visited upon those people concealing what actually
17 occurred to Mr. Moorehead for the course of a year
18 destroying his family in it, destroying his home,
19 destroying people he cared about.
20 And to think that he had to go through a year
21 being investigated by the FBI and no one came forward, no
22 one to say hey, you were with us for 17 years, a member of
23 our community, a member of our schools, a member of our
24 church, someone who was just white, Christian and male and
25 was ostracized for it and thrown to the trash as garbage.

1 And when we think that we can take someone and assassinate
2 our political opponents because we don't like what they
3 stand for just to confer favors with the far left leaning
4 liberal board, that's a problem here.
5 Now, we can all be attorneys and stuff our
6 pockets full of money, but there's also requirements of
7 what's appropriate and what's acceptable, and it's not
8 acceptable to violate the First Amendment. It's not
9 acceptable to violate the Fourth Amendment. It's not
10 acceptable to violate the Fifth or the Fourteenth. And
11 what we have here is a closed investigation that he did
12 nothing wrong, but everybody wants to hide their
13 involvement in destroying this man's life and his home
14 unit and his trust with the community, his trust with his
15 union and everything else, and that's really sad. Now,
16 let me finish.
17 Not only did we requesting this, it's been -- and
18 not only is it relevant, they lied about it to him for now
19 a year. They're taking the ability from him to put food
20 on his table for a year. They know he did nothing wrong,
21 but they won't publicly say we are sorry, Mr. Moorehead.
22 So now, he's unemployable anywhere in the nation as a
23 schoolteacher in leaving his own home in Seattle, losing
24 his mother, losing his union, losing everything, and the
25 people and the powers that be all wanna standing around

1 pretending we're so righteous 'cause we wear suits. It's
2 dripping with insincerity. And to have this process occur
3 without any -- without any constitution of truth and
4 justice and propriety is really -- is really saddening.
5 And so it was ordered a privilege log be produced. It
6 wasn't.

7 It was ordered that there was to be an in camera
8 review. It wasn't. And then, it was reconsidered and the
9 hearing officer, Mr. Sultanik, rightfully so said yeah,
10 although he may not see all my positions or my arguments,
11 that he deemed that yes, after consultation with Mr. Haaz
12 that this is something important to look at to determine
13 whether or not what we're saying, which we are very, very
14 sure of that there was deep involvement by the FBI. And
15 everyone wants to pretend that they don't remember, but
16 they're doctors. They're administrators, and they make a
17 lot of money. And they've never even seen a situation
18 where the FBI was involved, but everyone has an absolute
19 lapse of memory, right?

20 I think I made my point very clear, and I would
21 ask the hearing officer to again implore and compel the
22 other side to produce the document 'cause all of it is not
23 attorney client communication. If there's anything
24 related to the investigation with the FBI, if there's
25 anything from the FBI in that file that these individuals

1 have not drafted, it's all relevant unless they're acting
2 as a secret arm of the FBI. And if they are, that's gonna
3 be a serious, serious consequence in the end to conceal
4 the fact, hide the ball and act as a secret arm of the FBI
5 and then not tell this man that he has a constitutional
6 right as they're condemning him for something that he
7 didn't even do and not even correcting the record to this
8 day.

9 **HEARING OFFICER SULTANIK:** Mr. Malofiy, I've
10 heard your arguments.

11 **MR. MALOFIY:** Thank you.

12 **HEARING OFFICER SULTANIK:** You've said them
13 before. And all I can tell you at this point in time is
14 that we need to proceed with the case as presented. I
15 hear you. You have an avenue to go forward with your
16 court proceeding that you filed a writ of summons. You've
17 not filed a complaint. And I have to tell you, I suspect
18 you're trying to use this administrative proceeding as
19 your form of discovery in that process, but I suspect
20 you're gonna be able to get much, if not all of this
21 information, through the judicial proceeding versus this
22 proceeding. This proceeding's a very narrow proceeding,
23 in my opinion.

24 **MR. MALOFIY:** Well, I just -- what authority do
25 you have, Mr. Sultanik, other than to standing and if the

1 people agree, we agree and if we don't, we don't? I
2 mean --

3 **HEARING OFFICER SULTANIK:** No, no.

4 **MR. MALOFIY:** I'm confused. What authority do
5 you have?

6 **HEARING OFFICER SULTANIK:** The authority I have
7 is to make a recommendation to the board of school
8 directors regarding whether or not there was cause on the
9 part of the district administration to terminate
10 Mr. Moorehead for not showing up to work as a result of
11 this reinstatement. That is the authority I have. And if
12 you don't like how that authority is exercised placed upon
13 the board's ultimate action, you have an appeal remedy
14 under state law.

15 **MR. MALOFIY:** I just -- I just wish your
16 authority had more force, to be honest with you. But that
17 being said, I will say and I will caution all members and
18 everyone that acted as a secret arm of the FBI that that's
19 not gonna be forgotten by this man, by Mr. Moorehead or
20 his counsel. And as long as there's blood in my veins and
21 a heart that's beating, I will see through to the end that
22 justice is served by this man and that this kind of the
23 violation of the Constitution does not occur, especially
24 not by insincere individuals, members, administrators,
25 district officials, fancy people that wear fancy suits

1 that really are bankrupt of all fairness and equity in
2 what's right, so I make that promise to you all here
3 today. We'll continue. I know you have to go with
4 personal care concerns. May I proceed, Mr. Sultanik?

5 **HEARING OFFICER SULTANIK:** I thought you were
6 finished with this witness.

7 **MR. MALOFIY:** One moment. One point Mr. Fluehr,
8 who's also counsel in the case, wants to make a point as
9 to the law as it relates to --

10 **MR. FLUEHR:** A legal point regarding the
11 assertion of privilege of what Mr. Taylor communicated to
12 Dr. Martinez. We did some quick research. We found
13 absolutely nothing that would allow an assertion of
14 privilege for an former unrepresented employee to not be
15 able to answer questions when she's -- when the question
16 is how were you told to answer the questions. In other
17 words, opposing counsel can't direct her how to answer
18 questions when she's unrepresented and no longer an
19 employee and then complain privilege because it's very
20 clear at this point that she was given the I don't recall
21 instruction by opposing counsel. That's what's happening.

22 **HEARING OFFICER SULTANIK:** That has not -- that's
23 not been made out.

24 **MR. FLUEHR:** Please don't interrupt. We haven't
25 been able to ask that question, and there's absolutely

1 no case law anywhere that I found that would allow the
2 assertion of privilege in such a scenario especially
3 'cause she's not an employee. She has had no involvement
4 with the district whatsoever since she left.
5 **HEARING OFFICER SULTANIK:** Did you check any
6 TTAs?
7 **MR. FLUEHR:** Mr. Sultanik, the case I found from
8 Pennsylvania was Fritz. I also found a case in the
9 federal court, Peralta where it says that when you have
10 this sort of thing with an unrepresented former employee
11 who's being told how to answer questions by counsel, it's
12 not privileged, and I defy anyone in this room to go find
13 in those factual circumstances --
14 **HEARING OFFICER SULTANIK:** Well, first --
15 **MR. FLUEHR:** -- an assertion of privilege being
16 allowed.
17 **HEARING OFFICER SULTANIK:** Mr. Fluehr, there is
18 no evidence that this witness was told by King Spry on how
19 to answer the question.
20 **MR. FLUEHR:** Two responses to that. First, her
21 answers of I don't recall, very convenient and just
22 totally lacking in sincerity as Mr. Malofiy pointed out.
23 And in fact, when you asked her a question about oh,
24 hypothetical whether the FBI was involved or not, you
25 know, what was their conclusion, and then she answered

1 right away as if her recollection was perfect. That kind
2 of contradiction is, in fact, evidence that there was an
3 instruction.
4 **HEARING OFFICER SULTANIK:** Well, then you --
5 **MR. FLUEHR:** Second of all, you prevented her
6 from actually answering the question and thereby failed to
7 allow us to establish what had happened, so our
8 objection's on the record.
9 **HEARING OFFICER SULTANIK:** It's on the record.
10 **MR. FLUEHR:** We've noted it, and we're gonna be
11 proceeding and pursuing this in the future.
12 **HEARING OFFICER SULTANIK:** Understood. Do you
13 have any other questions of the witness?
14 **MR. MALOFIY:** No further questions of this
15 witness.
16 **HEARING OFFICER SULTANIK:** Does the
17 administration have any question of the witness?
18 **MR. TAYLOR:** No.
19 **HEARING OFFICER SULTANIK:** The witness is
20 excused, and I wish you the best of luck in your personal
21 matters. Thank you.
22 **THE WITNESS:** I appreciate it.
23 **HEARING OFFICER SULTANIK:** Dr. Martinez.
24 **THE WITNESS:** Thank you very much.
25 **HEARING OFFICER SULTANIK:** Your next witness?

1 **MR. MALOFIY:** It would be I believe Jennifer
2 Ramos, correct? She's not a doctor, correct? She
3 doesn't --
4 **HEARING OFFICER SULTANIK:** She does not have a
5 doctorate, to the best of my knowledge.
6 We can take a little break right now.
7 **MR. MALOFIY:** Thank you. Thank you,
8 Mr. Sultanik. We got a five minute break. Thank you.
9 (A short break was held.)
10 **MR. MALOFIY:** Mr. Sultanik, whenever you tell
11 me --
12 **HEARING OFFICER SULTANIK:** I'm ready.
13 **MR. MALOFIY:** Mr. Fluehr is back.
14 **HEARING OFFICER SULTANIK:** Thank you. Back on
15 the record. The time is 1:58 p.m. on December 14, 2021.
16 The attorneys for Mr. Moorehead are in the process of
17 presenting their case. And at this point in time, I
18 believe they're calling another witness, Jennifer Ramos.
19 JENNIFER RAMOS, was called as a witness and after
20 having been first duly sworn, according to law, was
21 examined and testified as follows:
22 -- DIRECT EXAMINATION --
23 **BY MR. MALOFIY:**
24 **Q. My name's Francis Alexander Malofiy, law firm of**
25 **Francis Alexander Malofiy. Here today is Mr. AJ Fluehr,**

1 **and also I have the great privilege and honor of**
2 **representing Mr. Moorehead. Thank you for being here.**
3 **A. Sure.**
4 **Q. You were at the last hearing as well, correct?**
5 **A. Correct.**
6 **Q. And you had the opportunity to hear Mr. Pidgeon's**
7 **testimony, correct?**
8 **A. Correct.**
9 **Q. To be clear, you're still an employee of the**
10 **district, correct?**
11 **A. That's correct.**
12 **Q. Is your official title currently deputy**
13 **superintendent?**
14 **A. Yes.**
15 **Q. At some point, were you acting superintendent?**
16 **A. Yes.**
17 **Q. And to be clear, when were you acting**
18 **superintendent?**
19 **A. Um, around the end of July, early August into**
20 **November.**
21 **Q. And then let me ask you this. Prior to you being**
22 **acting superintendent, what was your position? Was it**
23 **also deputy superintendent?**
24 **A. Yes.**
25 **Q. So for a brief period of time, you jumped into**

1 the role of the acting superintendent from the deputy
2 superintendent position?
3 A. Jumped is one way to put it, yes.
4 **Q. Would it be a fair statement -- and correct me if**
5 **I'm wrong -- that you, for lack of a better word, jumped**
6 **into the position of acting superintendent because there**
7 **was a void until the district found a new superintendent?**
8 A. Dr. Martinez resigned.
9 **Q. Was Dr. Martinez's resignation due in any part to**
10 **things that happened in the district?**
11 A. I'm not aware of that.
12 **Q. Did it have to deal with Mr. Moorehead?**
13 A. I'm not aware of that either.
14 **Q. How long have you been employed with the**
15 **district?**
16 A. Since 1999.
17 **Q. 22 years?**
18 A. 22, 23 years.
19 **Q. Who do you consider the administration of the**
20 **Allentown School District? Would be it superintendent,**
21 **deputy superintendent, executive director of HR? Who do**
22 **you consider the top brass of the administration? How do**
23 **you identify them?**
24 A. The cabinet is comprised of deputy assistant
25 superintendents and executive directors and some

1 directors.
2 **Q. I'm just not -- I'm not as knowledgeable as you**
3 **as to these things, and so I have some questions. I see**
4 **here -- I do see here who the board is made up of, but I'm**
5 **not sure exactly the full list of the, I guess, cabinet.**
6 **You would say it would be the superintendent. Fair**
7 **statement, right?**
8 A. Yes.
9 **Q. Deputy superintendent. One or more than one?**
10 A. Right now, there's only one.
11 **Q. That's you, correct?**
12 A. Correct.
13 **Q. You said right now, there's only one. Is there**
14 **usually more than one?**
15 A. There have been more than one.
16 **Q. I see. Why would there be two roles of deputy**
17 **superintendent?**
18 A. They oversee different areas.
19 **Q. Generally -- well, let me ask you this. Your**
20 **role as deputy superintendent today, has it been the same**
21 **role that you were in prior to Martinez?**
22 A. Yes.
23 **Q. What role do you have as deputy superintendent?**
24 **What role or function?**
25 A. Primarily oversee operations of the district.

1 **Q. What does that include?**
2 A. Finance, food service, technology, facilities and
3 human resources.
4 **Q. Would staffing be human resources?**
5 A. Yes.
6 **Q. Who reports to you?**
7 A. Um, the executive director of human resources,
8 the business manager, the director of operations, the
9 director of facilities, executive director of facilities,
10 director of food services. There could be somebody I'm
11 missing.
12 **Q. Okay. Now, as it relates to Mr. Moorehead's**
13 **matter, was anyone reporting to you or would it be just be**
14 **the executive director of human resources?**
15 A. Can you say that question again?
16 **Q. As it relates to Mr. Moorehead's matter, the**
17 **reason we're here today, do you recall who, if anyone, as**
18 **to those who report to you would have discussed or**
19 **provided you information in regard to Mr. Moorehead?**
20 **Would it only be the executive director of HR, which I**
21 **believe is to be Mr. Pidgeon?**
22 A. Mr. Pidgeon. The lead investigator on that
23 matter, though, was Mr. Freund, so --
24 **Q. When you say the lead investigator was**
25 **Mr. Freund, what do you mean by that?**

1 A. The superintendent at the time referred that
2 matter to our solicitor's firm as the folks running point.
3 **Q. Why would it be done externally rather than**
4 **internally?**
5 A. We refer a lot of personnel matters out. We have
6 some staffing issues. But at that time, that was the
7 superintendent's call like others.
8 **Q. Which superintendent was that?**
9 A. Mr. Parker.
10 **Q. Did you speak to Mr. Parker in regards to**
11 **Mr. Moorehead's matter?**
12 A. Um, I'm sure I did in -- in -- in meetings with
13 the investigator and Mr. Pidgeon.
14 **Q. Let's go back to the cabinet members. You had**
15 **indicated there was one or two deputy superintendents at**
16 **that time potentially. Who would be the other one?**
17 A. Dr. Brown was deputy superintendent for about two
18 years before she left.
19 **Q. What was she? What role?**
20 A. Deputy superintendent of equity, accountability
21 and school improvement.
22 **Q. Equity. Who's in charge of maintaining a safe**
23 **environment for teachers or students?**
24 A. All of the administration.
25 **Q. What was done in regards to assuaging**

1 Mr. Moorehead's concerns about him returning to school in
2 a hostile environment?
3 A. I'm not sure we had a chance to have that
4 conversation with him.
5 Q. Did he ever share that with you, either himself
6 or by through counsel?
7 A. I believe I was copied on -- on an e-mail or a
8 letter.
9 Q. What, if anything, was done to assuage his
10 concerns about correcting the record about him being
11 involved in an insurrection on the Capitol building? Was
12 any statement going out to the parents or teachers or
13 students?
14 A. No.
15 Q. Why not?
16 A. I can't speak to why prior folks would have done
17 that or not done that.
18 Q. I'm asking you why you didn't do that.
19 A. I didn't do that because two superintendents
20 before me led the -- the investigations or the decision
21 making, and so I opted to not respond to that.
22 Q. Hold on a second. You said two superintendents
23 led the investigation. Who are you referring to?
24 A. I'm referring to Mr. Parker and Dr. Martinez.
25 Q. You're saying Dr. Martinez led the investigation

1 into Mr. Moorehead?
2 A. I'm not saying she led the investigation. She
3 was a part of decision making, I'm assuming.
4 Q. Wait a second. You've been acting -- correct me
5 if I'm wrong. Ms. Martinez left some time in September or
6 August?
7 A. End of July, early August.
8 Q. End of July to early August. You've been acting
9 as superintendent end of July, early August until
10 Mr. Stanford, Dr. John Stanford came in as the new
11 superintendent, correct?
12 A. Correct.
13 Q. How many months is that?
14 A. Three, three and a half.
15 Q. Any point in those three, three and a half months
16 did you think boy, maybe it would make sense to correct
17 the record and let the community members know that
18 Mr. Moorehead in fact did not violate any school policy --
19 A. I did not.
20 Q. -- on January 6th?
21 A. I did not.
22 Q. Why not?
23 A. I --
24 Q. Was that a lapse in your judgment?
25 A. No. It was the decision that I made in the

1 superintendent seat at the time after other
2 superintendents were also involved in the decision making.
3 Q. You can't pass the buck to people that did things
4 before you, can you?
5 A. You're correct.
6 Q. So when we see this posterboard up, which I think
7 it's very, very good. Safety, number one, you see that?
8 A. Uh-huh.
9 Q. So are you telling me that even though there was
10 animosity towards Mr. Moorehead because false information
11 was blasted about him on January 7th by the district,
12 you're saying that nothing was done to retract those
13 statements or correct the record?
14 MR. TAYLOR: Objection. I don't know if there's
15 any animosity directed to him by the district.
16 HEARING OFFICER SULTANIK: That assumes -- yeah.
17 I'm gonna sustain the objection. That is not a fact of
18 record. Please rephrase your question.
19 BY MR. MALOFIY:
20 Q. Did you ever become aware that there was
21 animosity in the community against Mr. Moorehead?
22 A. Um, I mean, I received his letter.
23 Q. Is that the only way you could determine that
24 fact?
25 A. I was aware of social media things that were

1 shared early on.
2 Q. How about the superintendent, Mr. Parker, writing
3 on January 7th that there was a staff member involved in
4 the Capitol building insurrection? How about that?
5 A. The letter Mr. Parker wrote?
6 Q. Yeah.
7 A. I'm aware of that.
8 Q. What did you do to correct that false
9 information?
10 A. I did not correct that letter. I didn't write
11 the letter. I didn't correct the letter.
12 Q. You agree with me that issues with some personnel
13 should not be discussed with the public, correct?
14 A. Correct.
15 Q. So why was that matter relating to Mr. Moorehead
16 discussed on January 7th? Was that your decision or
17 someone else's?
18 MR. TAYLOR: Objection. That posting by
19 Mr. Parker did not mention Mr. Moorehead by name. That's
20 a fact.
21 BY MR. MALOFIY:
22 Q. Were you confused who the staff member was when
23 Mr. Parker wrote that letter that went out to the
24 community, teachers and students?
25 A. No.

1 Q. Okay. You knew it was Mr. Moorehead, correct?
2 A. Yes.
3 Q. Who authorized that letter to be written? Was it
4 written by counsel or was it written by Mr. Parker?
5 A. Um, I'm not 100 percent if it written by
6 Mr. Parker. I believe counsel was shared with the letter.
7 I believe counsel received the letter.
8 Q. Isn't it true that it was actually drafted by
9 counsel and Mr. Parker was made to sign or was it drafted
10 by Mr. Parker and counsel approved it?
11 MR. TAYLOR: If you know.
12 THE WITNESS: I don't know the answer to that.
13 BY MR. MALOFIY:
14 Q. How is it usually handled that letters are issued
15 to the public regarding a staff member? Who approves
16 that? You're in charge of the staffing, correct?
17 A. I oversee the operations related to HR, but I
18 don't make decisions that -- that the board approves
19 decisions or the superintendent approves the final
20 decision.
21 Q. Did you say no, this is a bad idea at any point
22 in time, like what are we doing here?
23 A. No.
24 Q. Did anyone?
25 A. I don't --

1 Q. Did -- let me -- Nicholas Miller, Phoebe Harris,
2 Lisa Conover, Dr. Stanford, William Hatt -- what's that
3 name there?
4 HEARING OFFICER SULTANIK: He's the board
5 secretary. He's not a board member.
6 BY MR. MALOFIY:
7 Q. Any other board members or administrators. Did
8 anyone say wait a second, what are we doing here? Why are
9 we rushing to judgment? Why don't we --
10 A. I don't know the answer to that. I'm not --
11 Q. Did you speak to anyone and said hey, what we're
12 doing is wrong? Did anyone say what we're doing is really
13 wrong here?
14 A. I'm not aware of what other people said.
15 Q. Did you ever tell anyone that hey, I think what
16 we're doing here is wrong in regard to Mr. Moorehead? Did
17 anyone speak up for this man?
18 A. I only spoke in regards to the seat I was sitting
19 in at the time.
20 Q. What -- how did you speak up? Did you --
21 A. I was updated on the investigation as it
22 occurred.
23 Q. Who were you updated by?
24 A. The solicitor, the lead investigator.
25 Q. Who is that?

1 A. John Freund.
2 Q. At any point in time did you ever say to the
3 other administrators or to the board, to the district hey,
4 wait a second, you know, what are we doing here in regards
5 to Mr. Moorehead? Are we making mistakes here? Should we
6 pause for caution? Is what we're doing right? Was there
7 anything in your mind that said what the -- wait a second,
8 let's take a moment to pause and see what we're doing here
9 with this committed teacher of 17 years who did nothing
10 wrong?
11 A. Ask the question again.
12 Q. Do you care about the teachers that commit to
13 your school district?
14 A. Yes.
15 Q. What did you do as the deputy superintendent of
16 HR and staffing to make sure that his rights were
17 protected, if any?
18 A. I supported the investigation through the lead
19 investigator and -- and HR.
20 Q. And you thought at all points in time, this was
21 just absolutely appropriate and nothing was done wrong,
22 right?
23 A. I supported the investigator, our solicitor.
24 Q. I understand you supported the solicitor.
25 A. Uh-huh.

1 Q. Did you have any questions in your mind as to
2 whether or not what was happening to Mr. Moorehead was
3 appropriate?
4 MR. TAYLOR: Objection. This is asked and
5 answered three times already.
6 HEARING OFFICER SULTANIK: I'm going to sustain
7 the objection on the basis of relevancy. I don't see what
8 it has to do with this matter. The fact of the matter is
9 whatever happened is that the district administration
10 ultimately reinstated Mr. Moorehead.
11 MR. MALOFIY: We obviously disagree. Community
12 outrage --
13 MR. TAYLOR: Objection.
14 HEARING OFFICER SULTANIK: You disagree -- wait,
15 wait. You disagree that he was reinstated?
16 MR. MALOFIY: I disagree that he was reinstated
17 as you state because there was additional elements to that
18 reinstatement. It wasn't just he was reinstated. He had
19 a reinstatement and publicly declare that he's a racist
20 and a bigot and take classes to say he's insensitive when
21 he's not.
22 MR. TAYLOR: Objection.
23 MR. MALOFIY: There was conditions. There was
24 conditions on his reinstatement, and it wasn't a blanket
25 reinstatement. It was another way to stick a fork in him

1 and put that thorn into him and say you did something
2 wrong as a shield to protect everyone who was actually
3 really doing really bad conduct.
4 **MR. TAYLOR:** With respect to characterization,
5 it's a document. It speaks for itself.
6 **MR. MALOFIY:** It does. It does.
7 **MR. TAYLOR:** Thank you for your opening
8 statement. The document speaks for itself.
9 **HEARING OFFICER SULTANIK:** I agree. Let's
10 continue.
11 **BY MR. MALOFIY:**
12 **Q. Did anyone in the administration come to you as**
13 **the deputy superintendent, acting superintendent and say I**
14 **have concern that what we're doing is wrong in regards to**
15 **Mr. Moorehead?**
16 **MR. TAYLOR:** Asked and answered the question.
17 You've asked this question three times.
18 **MR. MALOFIY:** I did no ask that question.
19 **MR. TAYLOR:** I believe you did.
20 **HEARING OFFICER SULTANIK:** The witness can answer
21 the question.
22 **THE WITNESS:** I -- I don't recall that occurring.
23 **BY MR. MALOFIY:**
24 **Q. When people talk about an unsafe situation or an**
25 **unsafe environment, what does the school district do, if**

1 **anything?**
2 A. What people?
3 **Q. Anyone. They say hey, I'm concerned about my --**
4 **I'm concerned about the safety of my student. I'm**
5 **concerned about the safety of a fellow teacher. I'm**
6 **concerned about the safety of an administrator. What is**
7 **the normal steps that are taken?**
8 A. We would work with the building administration.
9 **Q. How did you work with the building administration**
10 **to consider Mr. Moorehead's concerns?**
11 A. We didn't have the opportunity to do that.
12 **Q. Why not?**
13 A. Because he didn't come in to meet with our human
14 resources department to determine his placement.
15 **Q. Wait. You didn't even correct the record, did**
16 **you?**
17 A. Didn't correct the record.
18 **Q. Wouldn't that be the first step to tell the**
19 **public that he did nothing wrong? Why for seven months**
20 **hasn't the record been corrected? Who told you not to**
21 **correct the record?**
22 A. Nobody.
23 **Q. Did the attorneys tell you not to correct the**
24 **record?**
25 **MR. TAYLOR:** Objection.

1 **HEARING OFFICER SULTANIK:** I agree.
2 **MR. TAYLOR:** That's an entirely slanderous
3 comment by counsel that is slanted per se.
4 **MR. MALOFIY:** I couldn't --
5 **MR. TAYLOR:** Just because this is a proceeding,
6 an administrative proceeding, you don't have the right to
7 slander me or my firm. You've done so repeatedly.
8 **MR. MALOFIY:** I asked a question. You don't
9 even understand what I'm saying.
10 **MR. TAYLOR:** No. You've slandered me is what
11 you've done.
12 **MR. MALOFIY:** Yeah. You don't understand --
13 **MR. TAYLOR:** And we've got a transcript of it.
14 **MR. MALOFIY:** Listen, you put your head on a
15 butcher block --
16 **MR. TAYLOR:** My head's not on a butcher block.
17 **MR. MALOFIY:** -- and it's gonna roll, right?
18 It's gonna roll.
19 **MR. TAYLOR:** I'm asking you stop slandering.
20 **HEARING OFFICER SULTANIK:** Both of you stop.
21 **MR. MALOFIY:** Pipe down.
22 **HEARING OFFICER SULTANIK:** Both of you stop it
23 right now. This is gonna -- I understand. I think you
24 should be asking your questions of the witness and not
25 directing your derision toward King Spry.

1 **MR. MALOFIY:** I'm not. He's the one who said I
2 slandered him. I did not.
3 **MR. TAYLOR:** You have.
4 **MR. MALOFIY:** And my question to this witness
5 might offend you because it puts a mirror in front of your
6 face and --
7 **HEARING OFFICER SULTANIK:** I'm stopping this
8 discussion now. We're going to continue with the
9 questioning of the witness, please.
10 **BY MR. MALOFIY:**
11 **Q. Ma'am?**
12 A. Yes.
13 **Q. Why didn't you correct the record and make a**
14 **statement out there that said that he did nothing wrong?**
15 A. I've already told you I opted not to do that as
16 to --
17 **Q. Do you think it's the right thing to do now as**
18 **you sit here?**
19 **MR. TAYLOR:** Objection.
20 **HEARING OFFICER SULTANIK:** What's the nature of
21 your objection?
22 **MR. TAYLOR:** It's speculative. It's been asked
23 and answered.
24 **HEARING OFFICER SULTANIK:** I'm gonna say it's
25 irrelevant. If she changed her mind now, what does that

1 have to do with this proceeding?
2 **BY MR. MALOFIY:**
3 **Q. Did you hear my question, ma'am?**
4 A. You --
5 **MR. TAYLOR:** I think it was sustained.
6 **MR. MALOFIY:** We're not even following his
7 rulings, apparently.
8 **MR. TAYLOR:** Well, I am.
9 **MR. MALOFIY:** You haven't. You didn't produce
10 the file.
11 **MR. TAYLOR:** I believe he made a ruling.
12 **MR. MALOFIY:** You didn't produce the file.
13 **MR. TAYLOR:** I believe he made a ruling.
14 **MR. MALOFIY:** You didn't produce the FBI file.
15 **MR. TAYLOR:** Well, you didn't produce the case
16 law that makes me have to do so.
17 **HEARING OFFICER SULTANIK:** Would you stop, stop
18 it right now? We're going to ask the question of the
19 witness and rephrase the question. I don't even remember
20 what it was at this point.
21 **BY MR. MALOFIY:**
22 **Q. Ma'am, as you sit here today, don't you think it**
23 **would be a smart idea to let the public know that this man**
24 **was not part of the insurrection that occurred on the**
25 **Capitol on January 6th --**

1 **MR. TAYLOR:** Objection.
2 **MR. MALOFIY:** -- and correct the record?
3 **MR. TAYLOR:** Objection. Relevance.
4 **HEARING OFFICER SULTANIK:** I'm going to sustain
5 the objection on the basis of relevancy. I don't think it
6 has anything to do with this proceeding at this point.
7 What she thinks right now doesn't change the issue. What
8 the district did is what the district did, and the
9 district is bringing charges to terminate the employee.
10 **BY MR. MALOFIY:**
11 **Q. Ma'am, you heard what Mr. Pidgeon said. There**
12 **was community outrage directed toward Mr. Moorehead,**
13 **correct? You heard when he said that last hearing,**
14 **correct?**
15 A. He may have said that. I -- I don't quite
16 remember all of his testimony.
17 **Q. Do you deny that there was community outrage with**
18 **regards --**
19 A. I do not --
20 **Q. -- to Mr. Moorehead?**
21 A. -- deny, no.
22 **Q. Okay. So what, if anything, did the district do**
23 **to address that concern of community outrage, if anything?**
24 **MR. TAYLOR:** Objection to the extent there's been
25 no proof that the district cause this outrage.

1 **HEARING OFFICER SULTANIK:** Okay. First of all,
2 first of all, I don't know if there's any testimony of
3 record with any degree of reliability establishing
4 community outrage.
5 **MR. MALOFIY:** It's his testimony, Mr. Sultanik,
6 and it's on the record. He said there was community
7 outrage towards Mr. Moorehead.
8 **MR. TAYLOR:** But he didn't say it was caused by
9 the district.
10 **MR. MALOFIY:** I didn't say that.
11 **MR. TAYLOR:** Well, you did --
12 **MR. MALOFIY:** Can you repeat the question that I
13 asked 'cause Mr. Taylor's having a hard time following?
14 (HEARING OFFICER SULTANIK reporter read back the last
15 question.)
16 **MR. TAYLOR:** I objected on the basis of
17 clarification. There's no evidence that the district is
18 the cause of this outrage.
19 **HEARING OFFICER SULTANIK:** I'll let her answer
20 the question to the extent that she can.
21 **THE WITNESS:** I'm sorry. Can you ask it one more
22 time?
23 **BY MR. MALOFIY:**
24 **Q. What, if anything, did the district do to address**
25 **the community outrage directed toward Mr. Moorehead?**

1 A. I don't believe the district did anything
2 directly to address that.
3 **Q. Is there a standard operating procedures when**
4 **there's a safety issue as it may relate to a student?**
5 A. Yes.
6 **Q. Was there a number, like standard operating**
7 **procedure what? What's it called?**
8 A. I don't think I can give it a number. It depends
9 on the issue, the type of incident, whatever.
10 **Q. Do you try to neutralize that threat or concern**
11 **or that safety concern?**
12 A. Yes.
13 **Q. When you learned that there was death threats**
14 **made to Mr. Moorehead and he had to go to law enforcement**
15 **to protect him and his family and put extreme measures at**
16 **his home and for the safety of his family and even had to**
17 **be elsewhere at a period of time, what did you do to**
18 **address that?**
19 **MR. TAYLOR:** Objection. I don't think there's
20 any evidence that she was aware of this.
21 **HEARING OFFICER SULTANIK:** I agree. You need to
22 have an adequate foundation.
23 **BY MR. MALOFIY:**
24 **Q. Do you recall the letters that were sent saying**
25 **that Mr. Moorehead received death threats?**

1 A. I received a letter that Mr. Moorehead submitted
2 to HR.
3 **Q. What did you do, if anything, to address those**
4 **concerns, his death threats?**
5 A. I did not address his death threats.
6 **Q. Who did?**
7 A. In the district?
8 **Q. Anybody in the administration that you're aware**
9 **of that addressed that concern of his death threats.**
10 A. I don't believe we would address that here in the
11 district.
12 **Q. So you did nothing?**
13 A. Sure.
14 **Q. Did any of the prior superintendents do anything**
15 **to address the death threats towards Mr. Moorehead and his**
16 **family?**
17 A. I mean, I -- I don't believe so.
18 **Q. If Mr. Moorehead was black or brown, would you**
19 **treat him any differently?**
20 **MR. TAYLOR:** Objection.
21 **MR. MALOFIY:** If he received death threats? Did
22 the fact that he was a white, Christian male affect the
23 way --
24 **MR. TAYLOR:** Objection.
25 **MR. MALOFIY:** -- the district viewed

1 Mr. Moorehead?
2 **MR. TAYLOR:** Objection. It's irrelevant.
3 **THE WITNESS:** You asking me what the --
4 **HEARING OFFICER SULTANIK:** If you can answer the
5 question, then.
6 **THE WITNESS:** Ask the question again.
7 **BY MR. MALOFIY:**
8 **Q. Why did you not consider the death threats that**
9 **were made upon Mr. Moorehead and his family?**
10 A. We didn't address that here in the -- in the
11 district. The death threats were made wherever it is they
12 were made. We asked him to return. We asked to meet with
13 him. That didn't happen.
14 **HEARING OFFICER SULTANIK:** Let me just try to
15 clarify this. These alleged death threats, were they
16 coming from district employees or were they coming from
17 the community?
18 **MR. MALOFIY:** I think we have to look at the FBI
19 file to determine that.
20 **HEARING OFFICER SULTANIK:** Well, we don't have
21 it, okay?
22 **MR. MALOFIY:** We have it. He won't hand it over.
23 **HEARING OFFICER SULTANIK:** We don't know if it
24 even exists.
25 **MR. MALOFIY:** No. It exists. He won't tender

1 it. He knows it exists.
2 **MR. TAYLOR:** Will you let the witness answer the
3 hearing officer's questions and stop interrupting him?
4 **MR. MALOFIY:** Yeah.
5 **HEARING OFFICER SULTANIK:** Do you know the source
6 of these death threats? Were they members of the
7 community versus members of the staff?
8 **THE WITNESS:** I -- I wouldn't know that.
9 **HEARING OFFICER SULTANIK:** If you knew it was a
10 member of the staff, would you do it differently than --
11 **THE WITNESS:** Yes.
12 **HEARING OFFICER SULTANIK:** -- just a member of
13 the community?
14 **THE WITNESS:** Yes.
15 **HEARING OFFICER SULTANIK:** Why is that?
16 **THE WITNESS:** Because we're responsible for our
17 staff while they're here.
18 **BY MR. MALOFIY:**
19 **Q. So what inquiry did you do to determine who made**
20 **the death threats against Mr. Moorehead?**
21 A. I wouldn't investigate that.
22 **Q. Was it any board member?**
23 A. I don't know the answer to that.
24 **Q. Was it any administrator?**
25 A. I don't know the answer to that.

1 **Q. Did you even ask anyone?**
2 A. Ask anyone about death threats?
3 **Q. Yeah. Was anyone aware of death threats about --**
4 **how do we protect this teacher who committed 17 years to**
5 **this district? Did you do that?**
6 A. Ask the question again.
7 **Q. Did you ask anyone in the administration how we**
8 **should protect Mr. Moorehead when there was death threats,**
9 **him being a 17 year committed teacher with no history of**
10 **any discipline?**
11 A. No. We asked Mr. Moorehead to come in so we
12 could talk to him about whatever his concerns were.
13 **Q. You're responsible for staffing, right, and HR?**
14 A. I -- I oversee it.
15 **Q. When did you become aware of the FBI**
16 **investigation into Mr. Moorehead?**
17 **MR. TAYLOR:** Objection.
18 **MR. MALOFIY:** You don't have to look at counsel
19 for the answer.
20 **MR. TAYLOR:** Yeah, she does.
21 **THE WITNESS:** I heard him say objection. That's
22 all.
23 **MR. TAYLOR:** She has a right to wait my
24 instruction.
25 **HEARING OFFICER SULTANIK:** What is your

1 objection?
2 **MR. TAYLOR:** Well, it's irrelevant.
3 **HEARING OFFICER SULTANIK:** I'll let the counsel
4 ask the question, but have some foundation about this as
5 to whether or not she's aware of an FBI investigation.
6 **BY MR. MALOFIY:**
7 **Q. At any point in time were you aware that there**
8 **was a FBI investigation in regard to Mr. Moorehead?**
9 A. I was contacted by the FBI.
10 **Q. Okay. Thank you. Finally we get some truth in**
11 **this room. Very impressed. When were you contacted by**
12 **the FBI?**
13 A. I don't know the exact date. It was -- it was
14 probably in -- in early January.
15 **Q. How did the FBI contact you, ma'am?**
16 **MR. HAAZ:** I'm sorry. Early January?
17 **THE WITNESS:** Right around the time of the
18 investigation. Sorry. I don't have the date.
19 **BY MR. MALOFIY:**
20 **Q. How did the FBI contact you?**
21 A. They called the district office and they left a
22 message.
23 **Q. You have that message?**
24 A. No. My secretary took the message.
25 **Q. I would ask that you preserve that message. What**

1 **did they say in that message? Was it a handwritten**
2 **message or was it a voice mail?**
3 A. I was asked to return the call.
4 **Q. Okay. What number?**
5 A. I don't have the number.
6 **Q. Who would have the number if you don't have the**
7 **number?**
8 A. The solicitor would have the number.
9 **Q. Well, I thought you said that your secretary took**
10 **the message down.**
11 A. She took the message. I don't have the message
12 anymore.
13 **Q. What's her name?**
14 A. Her name's Nidia.
15 **Q. What was it?**
16 A. Nidia.
17 **Q. How do you spell it?**
18 A. N-I-D-I-A.
19 **Q. Okay. What's her last name?**
20 A. Whiteman.
21 **Q. Spell it.**
22 A. White and M-A-N.
23 **Q. She is a secretary?**
24 A. Uh-huh.
25 **Q. For you or for the administration?**

1 A. For me.
2 **Q. So your secretary?**
3 A. Uh-huh.
4 **Q. What did she tell you when she took the message**
5 **down?**
6 A. She said the FBI is -- is -- the FBI is looking
7 for somebody to speak to.
8 **Q. And did they provide a number?**
9 A. Yes.
10 **Q. Did you call back the FBI?**
11 A. First, I informed the superintendent that the FBI
12 called.
13 **Q. That's Mr. Parker?**
14 A. Correct.
15 **Q. How did you inform him, by e-mail or by text or**
16 **by phone? How?**
17 A. I believe I called him.
18 **Q. And that would be on do you know what day?**
19 A. That January at some point right after the
20 investigation started.
21 **Q. When did the investigation start?**
22 A. 7th, 8th.
23 **Q. Well, the insurrection at the Capitol was January**
24 **6th. It was a Wednesday.**
25 A. Uh-huh.

1 **Q. Do you know if it happened that week that you**
2 **received a call or some time after?**
3 A. I believe it was that week.
4 **Q. Was it that day of the 6th or was it the next day**
5 **on the 7th?**
6 A. It was not the 6th. That much, I know.
7 **Q. So we know it's not the 6th. And it was that**
8 **week, so it would have been that Thursday or Friday?**
9 A. I believe so.
10 **Q. You would have e-mail communications related to**
11 **the FBI investigation or inquiry, right?**
12 A. I do not.
13 **Q. Well, they called you. You called them back.**
14 **You had a number to call them, correct?**
15 A. I did.
16 **Q. Who did you speak to? What agent? There's more**
17 **than one, wasn't there?**
18 A. There was one agent that I speak to for about a
19 minute with the solicitor on the line with me.
20 **Q. That's not privileged. What was talked about?**
21 **What happened?**
22 A. I believe he asked if we would share whatever
23 information we had.
24 **Q. He asked --**
25 A. Or if we had information. I'm not really -- I

1 don't remember exactly.
2 **Q. So let's just take it back there.**
3 A. Uh-huh.
4 **Q. So you remember receiving a phone call from the**
5 **FBI. How many times -- how long have you been working for**
6 **this administration? You said 22 years?**
7 A. I've been in the district 22, 23 years.
8 **Q. And how many times has the FBI left a message for**
9 **you asking to speak to you?**
10 A. That is the first time.
11 **Q. Okay. Pretty significant, correct?**
12 A. Sure.
13 **Q. You ever speak to the FBI on any other occasion**
14 **in all your years?**
15 A. I don't believe so, but --
16 **Q. FBI calls, leaves a message that's taken by your**
17 **secretary, leaves a number. Which office, Allentown**
18 **office or -- the field office in Allentown or the main**
19 **office in Philadelphia?**
20 A. I'm not sure where he called from, but I -- I
21 thought he was from Allentown.
22 **Q. You remember his name?**
23 A. I do not.
24 **Q. Who would have his name?**
25 A. I believe the lead investigator has his name.

1 **Q. You could find his name. You have it written**
2 **down somewhere, note or something, right?**
3 A. I don't have any notes, but I'm sure that the
4 lead investigator has notes.
5 **Q. You mean you don't have any notes in regards to**
6 **Mr. Moorehead's matter?**
7 A. I do not.
8 **Q. Do you think your secretary does?**
9 A. No.
10 **Q. We should call her?**
11 A. No.
12 **Q. She doesn't have any notes?**
13 A. I don't believe she does.
14 **Q. How did she give you the note that the FBI had**
15 **contacted you?**
16 A. A little sticky note, probably.
17 **Q. Where's that sticky note?**
18 A. In the garbage.
19 **MR. MALOFIY:** I would make a request to preserve
20 all documents and things relating to Mr. Moorehead's
21 matter.
22 **HEARING OFFICER SULTANIK:** We're not gonna
23 preserve items that went into the garbage.
24 **MR. MALOFIY:** Going forward so there's no
25 spoliation charge that apparently would exist.

1 **BY MR. MALOFIY:**
2 **Q. Ma'am, so after you received that note, you**
3 **called back on your own or you waited to go with counsel?**
4 A. I went with counsel.
5 **Q. Then what happened? You called the FBI?**
6 A. We -- yes, we made the call.
7 **Q. Walk me back. Are you in your office or in his**
8 **office or is there a joint phone call?**
9 A. It was a joint phone call.
10 **Q. Where were you?**
11 A. I believe I was home because of the pandemic.
12 **Q. So that phone call, who initiated the phone call,**
13 **you or was it Mr. Taylor?**
14 A. It was Mr. Freund. I don't remember if I made
15 the call or he made the call. I just know we were both on
16 the call.
17 **Q. Do you know where he was when he made the call?**
18 A. I don't.
19 **Q. So you were home, though, correct?**
20 A. I -- I think so.
21 **Q. And you think the phone call was how long?**
22 A. I don't know, a minute or two.
23 **Q. So there'll be a phone call some time on that**
24 **Thursday or Friday that would indicate when you spoke to**
25 **the FBI, correct?**

1 A. Yeah.
2 **Q. What was said in that phone call? Just walk it**
3 **back. Did you make the first communication to the FBI?**
4 A. When you --
5 **Q. Or speak to the agent or did Mr. Freund?**
6 A. I don't remember. There was very little said.
7 **Q. Well, just take me back. What do you remember?**
8 A. I remember something to the effect of sharing
9 information or providing information if we had anything to
10 share.
11 **Q. I see. And was this before or after Mr. Parker**
12 **wrote something that went out to the community members?**
13 A. I can't answer that accurately. I'm not sure.
14 The time line was tight, I think.
15 **Q. Right around the time period?**
16 A. Probably.
17 **Q. So what information did you share with the FBI?**
18 A. I shared that I didn't have anything to share and
19 that Mr. Freund is the lead investigator.
20 **Q. You shared that you didn't have anything to**
21 **share. Did you share that he was a 17 year teacher that**
22 **had no record whatsoever?**
23 A. That was not what he asked.
24 **Q. What did he ask?**
25 A. He asked if we had information to share.

1 **Q. What kind of information?**
2 A. I'm assuming --
3 **Q. You share good information about him?**
4 A. I shared that I didn't have any information to
5 share and that the solicitor is the lead investigator.
6 **Q. And you don't recall if this is before or after**
7 **Parker's statement, correct?**
8 A. Yeah. I don't know that.
9 **Q. So when you said you didn't have information to**
10 **share, what does information mean to you? Bad**
11 **information, good information, information in regards to**
12 **what?**
13 A. In regards to whatever the investigation was --
14 was unfolding.
15 **Q. What did he ask you about when he left the**
16 **message?**
17 A. He didn't ask anything in the message.
18 **Q. What information did he ask you to share about**
19 **what? How would you know if you didn't have any if he**
20 **didn't identify what he was looking for?**
21 A. Anything relating to the investigation.
22 **Q. There was an ongoing investigation as to**
23 **Mr. Moorehead before the FBI contacted you? Is that what**
24 **you're telling me?**
25 A. I'm telling you the investigation started. And

1 at some point, we got a call from the FBI.
2 **Q. So you're telling me that the investigation had**
3 **already begun before the FBI contacted you. Is that what**
4 **you're saying?**
5 A. I -- I think the investigation was beginning.
6 **Q. Wait a second. What prompted the investigation**
7 **of Mr. Moorehead? Was it the FBI inquiry or was it**
8 **separate and apart from the FBI inquiry?**
9 A. What prompted the investigation were his social
10 media posts.
11 **Q. You're saying that -- wait. The investigation --**
12 **not what prompted. What -- when did the investigation**
13 **begin for Mr. Moorehead in the district, before or after**
14 **the FBI involvement?**
15 A. Ask it again. I'm sorry. I'm just trying to be
16 accurate.
17 **Q. Did the formal investigation by the district in**
18 **regards to Mr. Moorehead occur before or after the FBI**
19 **inquiry?**
20 A. Before. Before.
21 **Q. It did?**
22 A. I believe so.
23 **Q. So you have a file that indicates that?**
24 A. I'm not the investigator, so I didn't have any
25 file or notes. Again, Mr. Freund was the one that was on

1 the call, and any further information around the
2 investigation was to be referred to him.
3 **Q. Well, wait a second. Was there an investigation**
4 **prior to the call with Mr. Freund or wasn't there? Was**
5 **there or wasn't there an investigation prior to the call**
6 **with the FBI?**
7 A. We started the investigation after his social
8 media posts. Wherever the FBI came into that is --
9 **Q. It could have been before?**
10 A. I'm not aware of that.
11 **Q. Okay. So my question to you is when did the**
12 **school district open a formal investigation into**
13 **Mr. Moorehead, before or after the FBI involvement?**
14 A. I -- I -- I -- I -- the investigation started
15 after the social media posts went up.
16 **Q. That's not my question.**
17 A. The FBI called at some point within that posting
18 and the investigation beginning.
19 **Q. When you identified him as the lead investigator,**
20 **was that -- was the investigation as to Mr. Moorehead**
21 **already begun?**
22 A. No.
23 **Q. Okay. That's what I wanted to know.**
24 A. Okay.
25 **Q. So after the FBI inquired and they asked you to**

1 **give them a call back, did he say who he was?**
2 A. He left his name. I don't know it anymore.
3 **Q. Was that the only FBI agent you dealt with?**
4 **There was more than one, correct?**
5 A. I had one call, and that was it.
6 **Q. Who handled the FBI after that?**
7 A. I don't know if there was FBI after that.
8 **Q. Are you maintaining that the FBI communications**
9 **with the district are privileged?**
10 **HEARING OFFICER SULTANIK:** That's not her role
11 to --
12 **MR. MALOFIY:** She's in HR and she's in charge of
13 staffing. She's there 22 years.
14 **HEARING OFFICER SULTANIK:** She's -- that's not
15 her role in HR to determine whether a discussion with the
16 FBI is privileged.
17 **BY MR. MALOFIY:**
18 **Q. Did you ever provide the FBI file to**
19 **Mr. Moorehead or disclose that to him?**
20 **MR. TAYLOR:** Objection. I don't think there's
21 been any testimony there was a file.
22 **MR. MALOFIY:** Okay. You wanna give me your file,
23 Mr. Taylor?
24 **MR. TAYLOR:** Objection.
25 **MR. MALOFIY:** You don't --

1 **MR. TAYLOR:** -- testified of the file's existence
2 at the time --
3 **BY MR. MALOFIY:**
4 **Q. Who has the file for Mr. Moorehead that had the**
5 **FBI communications or it identifies him? Who has that?**
6 **Do you have it?**
7 A. I don't have a --
8 **Q. Who would have it?**
9 A. I'm assuming the investigators have the file.
10 **Q. So Mr. Taylor and Mr. Freund?**
11 A. Yes.
12 **Q. Okay. I see. I see. Did you give them the**
13 **file?**
14 A. I didn't have a file to give them.
15 **Q. Did you give them the number who called you? Did**
16 **you tell them who it was?**
17 A. Did I tell who?
18 **Q. Did you tell Mr. Freund or Mr. Taylor which FBI**
19 **agent was trying to share information in regards to**
20 **Mr. Moorehead?**
21 A. Mr. Freund was on the call with me that I took.
22 **Q. You didn't take the call. You made the call.**
23 A. I made the call, yes.
24 **Q. Who made the call, you or Mr. Freund?**
25 A. I can't answer which one of us actually dialed

1 the number.
2 **Q. Okay. And they asked to speak to you**
3 **specifically when they left this message to call at the**
4 **school?**
5 A. I believe they asked to speak to somebody in
6 administration.
7 **Q. Why did that go to you?**
8 A. I think my secretary took the call.
9 **Q. Did Mr. Parker take the call or did Mr. Parker**
10 **speak to the FBI?**
11 A. I don't know if Mr. Parker spoke to the FBI.
12 **Q. Who authorized the FBI to go into his computer**
13 **devices? Did you?**
14 A. Did I authorize --
15 **MR. TAYLOR:** Objection.
16 **MR. HAAZ:** Sustained. There hasn't been any --
17 **MR. MALOFIY:** You're the sous chef. You're not
18 even authorized to be here. You're not even supposed to
19 be here.
20 **HEARING OFFICER SULTANIK:** Mr. Malofiy, would you
21 stop being insulting?
22 **MR. MALOFIY:** He's not authorized to be here, and
23 I shouldn't --
24 **HEARING OFFICER SULTANIK:** He is authorized to
25 work.

1 **MR. MALOFIY:** No. I have it right here. I
2 showed the documents.
3 **HEARING OFFICER SULTANIK:** Mr. Malofiy, stop it.
4 **MR. MALOFIY:** He's not authorized.
5 **HEARING OFFICER SULTANIK:** Mr. Malofiy, your
6 legal arguments border on the terrestrial, so let's move
7 forward.
8 **MR. MALOFIY:** Let's talk about terrestrial,
9 what's here on record and what's in my hand.
10 **HEARING OFFICER SULTANIK:** Mr. Malofiy --
11 **MR. MALOFIY:** Send that motion for --
12 **HEARING OFFICER SULTANIK:** What is your question
13 other than --
14 **MR. MALOFIY:** No, no. I have an authority to
15 correct the record when you misconstrue it.
16 **MR. TAYLOR:** Does he have a question? Otherwise,
17 I'm gonna take my witness off the stand.
18 **MR. MALOFIY:** Says motion to ratify the
19 appointment of Jeffrey Sultanik.
20 **MR. TAYLOR:** The witness is --
21 **MR. MALOFIY:** Only Jeffrey Sultanik is the
22 hearing officer, not --
23 **HEARING OFFICER SULTANIK:** What is the question?
24 And I'll rule on it if you don't like Mr. Haaz's ruling.
25 Okay? What is your question?

1 **MR. MALOFIY:** Can you read back my question,
2 ma'am?
3 (HEARING OFFICER SULTANIK reporter read back the last
4 question.)
5 **MR. TAYLOR:** My objection is I don't think
6 there's been any evidence or foundation that the FBI went
7 into Mr. Moorehead's computer.
8 **MR. MALOFIY:** Are you gonna testify? 'Cause I'd
9 like to put you on the stand.
10 **HEARING OFFICER SULTANIK:** He is alleging that
11 there is no foundation to the question. And that, I
12 sustain.
13 **MR. TAYLOR:** And that means --
14 **BY MR. MALOFIY:**
15 **Q. Ma'am, were you aware that there was an**
16 **investigation to his personal devices?**
17 A. Yes.
18 **Q. Okay. Who authorized that?**
19 A. The investigation occurred through our -- through
20 the solicitor's office.
21 **Q. But you were aware, correct?**
22 A. Yes.
23 **Q. Did you approve it?**
24 A. No. It didn't go -- I wasn't the lead on that.
25 **Q. Was Mr. Taylor and Mr. Freund just acting rogue**

1 or did they clear things through you?
2 MR. TAYLOR: Objection.
3 THE WITNESS: I wasn't the superintendent at the
4 time.
5 BY MR. MALOFIY:
6 Q. So who was authorizing the investigation into his
7 electronic devices?
8 HEARING OFFICER SULTANIK: She already answered
9 that she did not know.
10 MR. MALOFIY: She didn't say that.
11 HEARING OFFICER SULTANIK: She said she wasn't a
12 part of the decision making process.
13 MR. MALOFIY: That's a misstatement of the
14 record.
15 BY MR. MALOFIY:
16 Q. Who was the decision making process? I wanna
17 know who's responsible for this. You understand?
18 A. The superintendent directed that the lead
19 investigator was the solicitor's office.
20 Q. But you were having communications with the FBI
21 with King Spry, correct?
22 A. I did -- I did return the call.
23 Q. How many communications did you have with King
24 Spry and the FBI? One or more than one?
25 A. I only spoke to the FBI once.

1 Q. Did you ever see the FBI's report?
2 MR. TAYLOR: Objection. Objection. No evidence
3 of the existence of the FBI report you're referring to.
4 MR. MALOFIY: Did you ever -- please, speaking
5 objections.
6 BY MR. MALOFIY:
7 Q. Did you ever see the FBI report?
8 MR. TAYLOR: Objection.
9 MR. MALOFIY: You don't have to look at your
10 counsel.
11 MR. TAYLOR: Yes, you have to look to me.
12 MR. MALOFIY: Oh, man.
13 MR. TAYLOR: I'm objecting.
14 BY MR. MALOFIY:
15 Q. Ma'am, you saw the report.
16 HEARING OFFICER SULTANIK: Let him rephrase the
17 question. What was this question again?
18 BY MR. MALOFIY:
19 Q. Did you see an FBI report, ma'am?
20 A. I'm not aware of a report, no.
21 Q. Did you see in his file, Mr. Moorehead's file,
22 did the words Federal Bureau of Investigation come up
23 anywhere?
24 A. I've not seen an FBI report.
25 Q. I didn't ask that. Do the words Federal Bureau

1 of Investigation come up anywhere in Mr. Moorehead's file?
2 A. I'm not -- I'm not sure of the answer to that.
3 Q. When's the last time you looked at the file? Did
4 you look at it in preparation for your testimony here
5 today?
6 A. I did not.
7 Q. Is it -- do you not have access to it?
8 A. I would have access to the file.
9 Q. So where's the file? Tell me.
10 A. I don't -- I'm assuming his file is in the HR
11 office.
12 Q. When's the last time you saw his file?
13 A. I -- I don't believe I looked at his file.
14 Q. Who maintains Mr. Moorehead's file?
15 A. The human --
16 MR. TAYLOR: Other than Mr. Malofiy when he was
17 forwarded the file last week.
18 THE WITNESS: Say that --
19 MR. MALOFIY: No, no. We're --
20 MR. TAYLOR: -- the entire file.
21 MR. MALOFIY: Please don't misstate the record.
22 I mean, what you're doing here today is really --
23 MR. TAYLOR: I'm correcting the record from all
24 your lies. He has the file.
25 THE WITNESS: Okay.

1 MR. MALOFIY: Excuse me? You have -- you want to
2 give me that file, but you're not allowing the hearing
3 officer --
4 MR. TAYLOR: You have the employment file.
5 MR. MALOFIY: You're lying.
6 MR. TAYLOR: You have --
7 MR. MALOFIY: You're lying.
8 MR. TAYLOR: You have the employment file.
9 MR. MALOFIY: You're lying through your mask.
10 HEARING OFFICER SULTANIK: Okay, both of you.
11 MR. MALOFIY: Wait a second.
12 HEARING OFFICER SULTANIK: Stop it.
13 MR. MALOFIY: Do we not have a subpoena that was
14 approved by the hearing officer to have an in camera
15 review of the investigation file?
16 MR. TAYLOR: You have a question as of --
17 MR. MALOFIY: Yeah, I did.
18 MR. TAYLOR: You have a question?
19 MR. MALOFIY: I will renew the request now that
20 he's trying to misconstrue the record, Mr. Sultanik. I
21 would renew the request now that he's trying to say that
22 and misconstrue the record. Would you tell Mr. Taylor to
23 produce the file in regards to the investigation of
24 Mr. Moorehead or at least have the in camera review?
25 HEARING OFFICER SULTANIK: We already went over

1 this once, twice maybe three times. Let's proceed with
2 this witness. You have a sworn witness who is on the
3 stand. Ask her a question. If she doesn't have the file,
4 she doesn't have the file.
5 **BY MR. MALOFIY:**
6 **Q. What made up the basis of the investigation into**
7 **Mr. Moorehead? What was the basis of fully investigating**
8 **him? What was done? Tell me the steps.**
9 A. I'm not -- I'm not quite sure I understand the
10 question.
11 **Q. On July 16th, there was a letter on the Allentown**
12 **School District letterhead. It says dear Mr. Moorehead,**
13 **after fully investigating your involvement in the event of**
14 **January 6, 2021. What made up the full investigation of**
15 **his involvement? Tell me. Tell me each part.**
16 A. I -- I don't know each part.
17 **Q. Who would know, Mr. Taylor and Mr. Freund?**
18 A. I believe the investigative -- the lead
19 investigator would know.
20 **Q. Who is that?**
21 A. Mr. Freund was the lead investigator.
22 **Q. Who was the unlead -- we have a hearing officer**
23 **and a --**
24 A. I mean, I believe reps from his firm would have
25 supported him.

1 **Q. Who do you know that was involved in any way,**
2 **shape or form? Mr. Freund was. He's the lead?**
3 A. Correct.
4 **Q. Is that investigation closed as to Mr. Moorehead?**
5 A. I don't know the answer to that.
6 **Q. So you're asking him to come back to school and**
7 **you don't even know if the investigation is closed as to**
8 **Mr. Moorehead?**
9 A. Yeah.
10 **Q. Wow. Are you telling me you don't know if the**
11 **investigation into Mr. Moorehead is closed as you sit here**
12 **today?**
13 **MR. TAYLOR:** Objection. She just answered it.
14 **HEARING OFFICER SULTANIK:** I sustain the
15 objection.
16 **BY MR. MALOFIY:**
17 **Q. At who point in did you learn that Mr. Moorehead**
18 **was not part of the Capitol building insurrection? At**
19 **what point in time, ma'am?**
20 A. I'm not sure when I -- when I learned of that.
21 Um, I'm assuming it was at some point this summer or late
22 spring. I'm not sure.
23 **Q. Were you on the call with Mr. Pidgeon and**
24 **Mr. Freund when they were interrogating Mr. Moorehead on**
25 **January 8th?**

1 A. No.
2 **Q. Was the FBI on that call?**
3 A. I wouldn't know the answer to that.
4 **Q. Wasn't Mr -- wasn't the investigation done in**
5 **concert with the FBI for Mr. Moorehead? Fair statement?**
6 A. I -- I didn't think that that was occurring, but
7 I wouldn't know.
8 **Q. Well, you talked about sharing information with**
9 **the FBI.**
10 **MR. TAYLOR:** Objection. She testified she had
11 nothing to share. She had one phone call that lasted one
12 minute.
13 **BY MR. MALOFIY:**
14 **Q. Did you share anything with Mr. Freund or**
15 **Mr. Taylor in regards to Mr. Moorehead?**
16 **MR. TAYLOR:** Objection. Attorney client
17 privilege.
18 **HEARING OFFICER SULTANIK:** Sustained.
19 **MR. MALOFIY:** You can't say she had nothing to
20 share and then say that you can't talk about anything that
21 she shared. I'm just asking if you did, not what the
22 contents were.
23 **BY MR. MALOFIY:**
24 **Q. Did you share anything with lead investigator**
25 **Mr. Freund or Mr. Taylor or King Spry in regards to**

1 **Mr. Moorehead? Yes, you did? No, you didn't?**
2 **MR. TAYLOR:** Same objection.
3 **MR. MALOFIY:** I'm not asking the contents.
4 **MR. TAYLOR:** Same --
5 **MR. MALOFIY:** I'm asking whether or not you did.
6 **HEARING OFFICER SULTANIK:** The act of sharing
7 information I don't believe is privileged, so she can say
8 yes or no to that. Beyond, the contents of that would be
9 privileged.
10 **THE WITNESS:** I may have shared if there was
11 information to share. I wouldn't hold it.
12 **BY MR. MALOFIY:**
13 **Q. Okay. At what point in time did you tell**
14 **Mr. Moorehead the FBI was involved in his investigation?**
15 **Tell me.**
16 A. I did not speak to Mr. Moorehead.
17 **Q. The first time it was actually affirmatively**
18 **disclosed was here today as you sit today, correct, that**
19 **you ever told him?**
20 A. Today was -- yes, I guess.
21 **Q. Why wasn't it disclosed earlier to him that he**
22 **has a Fifth Amendment right and that he has the right to**
23 **remain silent and anything he says can and may be used**
24 **against him in a court of law that --**
25 **MR. TAYLOR:** Objection. She's not a lawyer.

1 MR. MALOFIY: -- as Mr. Moorehead?
2 HEARING OFFICER SULTANIK: Objection sustained.
3 There's no inherent right to enforce that under
4 Pennsylvania law.
5 MR. MALOFIY: That's an absolute --
6 HEARING OFFICER SULTANIK: Not on the part of an
7 employer --
8 MR. MALOFIY: That's an absolute misstatement of
9 the law --
10 MR. TAYLOR: Employer --
11 HEARING OFFICER SULTANIK: Put it in your brief.
12 MR. MALOFIY: Well, you don't even read my brief.
13 We learned that earlier on today. Make rules without even
14 reading the documents or what was briefed upon.
15 HEARING OFFICER SULTANIK: If they were coherent,
16 I would.
17 MR. MALOFIY: You didn't even read them.
18 HEARING OFFICER SULTANIK: I --
19 MR. MALOFIY: You didn't even look at the --
20 HEARING OFFICER SULTANIK: If they were coherent,
21 I would.
22 MR. MALOFIY: You know, here's a man who's
23 dripping with insincerity who has no authority
24 whatsoever --
25 HEARING OFFICER SULTANIK: Would you stop

1 repeating yourself and go on and defend your client?
2 MR. MALOFIY: Read the briefs and don't say you
3 haven't --
4 MR. TAYLOR: Are you done with my client?
5 MR. MALOFIY: No, I'm not.
6 BY MR. MALOFIY:
7 Q. Who searched his devices, ma'am?
8 A. I don't know the answer to that.
9 Q. Did they tell you the FBI did?
10 A. No.
11 Q. Did you learn the FBI looked at his devices?
12 A. I did not know that.
13 Q. You didn't?
14 A. No.
15 Q. Which organization took the time to go through
16 his devices? Do you know? Do you know the name of them?
17 Was it Allentown? Who was it in Allentown? No one,
18 right?
19 A. I don't believe so. I believe the solicitor led
20 that.
21 Q. What's the normal procedure for searching
22 devices?
23 A. It depends on what the issue is.
24 Q. Tell me. You want to go look at a teacher's
25 devices 'cause you wanna share information with the FBI.

1 What's the procedure there?
2 A. We would work with our solicitor on something
3 like that.
4 HEARING OFFICER SULTANIK: I have a clarification
5 question. These devices that you're talking about, are
6 these personal devices of the employee or are these
7 district issued devices? Because the rules are different.
8 THE WITNESS: District issued devices.
9 HEARING OFFICER SULTANIK: So the district owns
10 this equipment; is that correct?
11 THE WITNESS: Yes.
12 HEARING OFFICER SULTANIK: So as a standard
13 practice, does the district have the right, in your
14 opinion, to search district owned devices?
15 THE WITNESS: Yes.
16 HEARING OFFICER SULTANIK: And you've done that
17 for not only Mr. Moorehead, but other employees?
18 THE WITNESS: Yes.
19 BY MR. MALOFIY:
20 Q. Can you think of any other situation where the
21 FBI was trying to share information with the school
22 district in investigating a teacher?
23 A. I don't know the answer to that.
24 Q. Do you remember any other?
25 A. I don't believe so, no.

1 Q. Did you ever ask Jason Moorehead whether or not
2 he was at the Capitol building insurrection?
3 A. I didn't lead the investigation.
4 Q. Do you know if anyone asked him that question?
5 A. I don't know that.
6 Q. And to be clear, you don't have any proof, any
7 document, any communication where you afforded this man
8 his Fifth Amendment right before you did an inquisition
9 upon him?
10 MR. TAYLOR: Objection to relevance.
11 HEARING OFFICER SULTANIK: I would just ask
12 Mr. Taylor when you make your objections, speak up.
13 MR. TAYLOR: Objection to relevance. I'm not
14 sure this is --
15 HEARING OFFICER SULTANIK: I'm gonna sustain that
16 it's irrelevant.
17 BY MR. MALOFIY:
18 Q. Ma'am, at any point in time did anyone tell
19 Mr. Moorehead of his Fifth Amendment right from the
20 administration?
21 MR. TAYLOR: Same objection.
22 HEARING OFFICER SULTANIK: Sustained.
23 MR. MALOFIY: On what ground?
24 HEARING OFFICER SULTANIK: How is she to know
25 what other individuals did?

1 MR. MALOFIY: 'Cause she --
2 HEARING OFFICER SULTANIK: You have no foundation
3 in your question.
4 MR. MALOFIY: I'm asking her if she's aware of.
5 BY MR. MALOFIY:
6 Q. Are you aware of anyone providing him a Fifth
7 Amendment --
8 MR. TAYLOR: Same objection.
9 MR. MALOFIY: Providing him his Fifth
10 Amendment --
11 MR. TAYLOR: Same objection.
12 MR. MALOFIY: -- cautionary instruction?
13 HEARING OFFICER SULTANIK: I'll let her answer it
14 'cause it's not gonna be given any weight in this
15 proceeding anyway.
16 MR. TAYLOR: Thank you.
17 THE WITNESS: I don't believe so. I'm not even
18 sure what question --
19 THE REPORTER: I'm sorry. What was that?
20 THE WITNESS: I said I'm not even sure what
21 question I was answering.
22 MR. MALOFIY: With the hearing officer's
23 indulgence?
24 BY MR. MALOFIY:
25 Q. Who is controlling social media of the Allentown

1 School District's website?
2 A. We have a communications manager.
3 Q. Who?
4 A. Her name's Melissa Reese.
5 Q. Did she change in the last year?
6 A. No.
7 Q. Did you instruct her to pull down certain
8 comments or to amplify others?
9 A. No.
10 Q. Okay. So if there's comments pulled down from
11 the Allentown School District website, who was in charge
12 of that? Who directed that?
13 A. I'm not sure.
14 Q. How about the Facebook page? Who's in charge of
15 that, same person?
16 A. Yes.
17 Q. Anyone else that you're aware of that was
18 involved in the FBI investigation besides yourself,
19 besides your secretary, besides Mr. Taylor, besides
20 Mr. Freund and the firm King Spry?
21 MR. TAYLOR: Objection. There's been no
22 testimony that I was involved in the FBI --
23 MR. MALOFIY: She said so.
24 MR. TAYLOR: No. I have an objection to that
25 question.

1 MR. MALOFIY: Fine. It's on the record.
2 HEARING OFFICER SULTANIK: Okay. I'll let her
3 answer the question.
4 THE WITNESS: Can you ask it again, please?
5 BY MR. MALOFIY:
6 Q. Any other individuals or entities that you were
7 aware of that was involved in the FBI investigation into
8 Mr. Moorehead?
9 A. I'm not aware of anybody.
10 Q. Any other organizations, entities that was
11 sharing information with the FBI in regard to
12 Mr. Moorehead?
13 A. I don't know the answer to that.
14 Q. If you don't know the answer to that, who would?
15 A. The lead investigator.
16 Q. I'm asking if you were aware of any other entity
17 or organization sharing information with the FBI in
18 regards to Mr. Moorehead.
19 MR. TAYLOR: Objection. Asked and answered.
20 THE WITNESS: I am not.
21 HEARING OFFICER SULTANIK: I'll let her answer.
22 THE WITNESS: I'm not aware.
23 MR. MALOFIY: All right. Nothing further except
24 for the file, but --
25 HEARING OFFICER SULTANIK: Understood. Do you

1 have any questions of Ms. Ramos?
2 MR. TAYLOR: No, we have no questions.
3 HEARING OFFICER SULTANIK: The witness is
4 excused.
5 MR. MALOFIY: Thank you, Ms. Ramos. I appreciate
6 your honesty on the issue of the FBI. I thank you for
7 your testimony here today. We have Mr. Leibold and
8 Mr. Parker.
9 HEARING OFFICER SULTANIK: What is your offer of
10 proof for Mr. Leibold? And Mr. Parker, we have no power
11 to enforce --
12 MR. MALOFIY: I thought he was in the building
13 here today.
14 HEARING OFFICER SULTANIK: Mr. Parker?
15 MR. MALOFIY: Yeah. Right? Isn't that right?
16 Didn't we see him in the building here today?
17 THE WITNESS: No, he's not here.
18 HEARING OFFICER SULTANIK: Mr. Parker left the
19 state.
20 MR. MALOFIY: My understanding is someone saw him
21 in the building here today. Now, maybe that's a mistake.
22 Is that a misstatement? You're telling me that's a
23 mistake, I'll accept your representation, although I I
24 probably shouldn't.
25 THE WITNESS: He's not here.

1 **MR. MALOFIY:** Maybe it was a false alarm. All
2 right.
3 **HEARING OFFICER SULTANIK:** So Mr. Parker, I can't
4 produce. Now, what's your offer of proof for Mr. Leibold
5 testifying in this proceeding?
6 **MR. MALOFIY:** He's involved in the investigation
7 with Mr. Freund. That's why. He was involved in the
8 inquisition of this man, and he was his union rep. They
9 knew from day one what happened. It's why we can't do a
10 grievance. You've asked us to -- made much hay about our
11 inability to work with the union, and it'll all be
12 understood at that point. The union abandoned this man.
13 **HEARING OFFICER SULTANIK:** I believe that the
14 issue of Mr. Leibold's testimony is the subject matter of
15 correspondence that I received this morning on my way to
16 this hearing from Jessica Stewart, who is counsel for the
17 Allentown Education Association and raised some questions
18 about the issue of the subpoena of Mr. Leibold and wanted
19 to have a Zoom call to address the issue, I believe. I
20 think you were copied on that.
21 **MR. MALOFIY:** Yeah. I just briefly looked at it
22 when I was entering --
23 **HEARING OFFICER SULTANIK:** Me too, so this is the
24 issue.
25 **MR. MALOFIY:** We will also try to get Mr. Parker

1 here. We're also still attempting to try to get him here.
2 We're doing our best, but we --
3 **HEARING OFFICER SULTANIK:** Well, you're going to
4 have to go into court to compel him, you know, 'cause we
5 have no power to compel him.
6 **MR. MALOFIY:** I think -- I think Mark Liebold's
7 important to our case as well as Mr. Parker. What
8 authority we have on Mr. Parker, I do not know, but
9 attorney Jessica Stewart had indicated she will make him
10 available as long as the hearing officer reissues the
11 subpoena with the next date, so that's all that's on the
12 table. I think all the other issues have been addressed,
13 just a brief inquiry as to Mr. Leibold. I think that we
14 can probably do it as soon as practically possible, as
15 soon as we have a date from Ms. Stewart and Mr. Leibold,
16 and he was also served a subpoena and said he would be
17 willing to appear.
18 **HEARING OFFICER SULTANIK:** All I can say is what
19 we know about Mr. Leibold's knowledge of this issue
20 relates to what you're saying, that he participated in the
21 investigation. But what difference does that make?
22 **MR. MALOFIY:** Also, you made a big deal about his
23 involvement and why we didn't choose an administrative
24 remedy. That will be explained to you at that point when
25 he testifies.

1 **HEARING OFFICER SULTANIK:** Okay. If it goes to
2 the issue of the election of remedies, I would agree with
3 you that it would be relevant to this proceeding.
4 **MR. MALOFIY:** And also to the issue of the
5 investigation.
6 **HEARING OFFICER SULTANIK:** On the investigation,
7 I have to tell you that I don't see the relevance on that
8 at all. But on the issue of election of remedies, I do
9 acknowledge your point and argument.
10 **MR. MALOFIY:** We would ask for some leeway into
11 that questioning because -- well, for other reasons. I
12 don't think I do.
13 **HEARING OFFICER SULTANIK:** Okay. Well, you don't
14 have any other witnesses today to proceed; is that
15 correct?
16 **MR. MALOFIY:** That's correct, Hearing Officer
17 Sultanik.
18 **HEARING OFFICER SULTANIK:** Okay. So we're going
19 to have to then -- if you're gonna be calling Mr. Leibold
20 and making a request for the issuance of his subpoena, you
21 can coordinate a time period with Ms. Stewart or even work
22 with her directly as to when we're going to do this. But
23 we need to pick a date for another hearing, and I will
24 tell you it's gonna have to be in January, given my
25 schedule.

1 **MR. MALOFIY:** Okay. What do we have? We'll
2 coordinate calendars and figure out when he's available
3 and she's available and share that with Hearing Officer
4 Sultanik and also opposing counsel. Does that sound
5 reasonable? And for January, correct?
6 **HEARING OFFICER SULTANIK:** Yes. It would have to
7 be after -- preferably after the first or second week of
8 January. Yes.
9 **MR. MALOFIY:** All right. Sounds good.
10 **HEARING OFFICER SULTANIK:** Okay. We're going
11 to --
12 **MR. MALOFIY:** Thank you.
13 **HEARING OFFICER SULTANIK:** We're going to recess
14 today's hearing to a date to be scheduled in the future to
15 have Mr. Moorehead's counsel supply Mr. Leibold as their
16 next witness. Thank you all for participating.
17 **MR. MALOFIY:** Thank you.
18 **MR. TAYLOR:** Thank you.
19 (The hearing was recessed at 2:58 p.m.)
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EXHIBIT 50

In The Matter Of:
Allentown School District
In Re: The Matter of Jason Moorehead

Session 3
March 16, 2022



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Termination Hearing
(Open Hearing)

RE: Jason Moorehead
Allentown School District

Stenographic Report of Termination Hearing
held at
Allentown School District
Administration Building
31 South Penn Street
Allentown, PA 18105

Wednesday,
March 16, 2022
Commencing at 12:14 p.m.

SESSION 3

- - -

HEARING OFFICER:
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- - -

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20 (For AEA/PSEA)

21 - - -

22 ALSO PRESENT:

23 Jason Moorehead
24 Jennifer Ramos, Deputy Superintendent of
25 Operations, Allentown SD
Mark Leibold, AEA President

INDEX OF WITNESSES

(None presented)

E X H I B I T S

(None presented)

1 HEARING OFFICER SULTANIK: Good
2 afternoon. My name is Jeffrey Sultanik,
3 the hearing officer in this matter. And
4 this is a continuation of the case
5 brought by the Allentown School District
6 against Mr. Moorehead.

7 As I recall, the case at this point
8 in time is in the hands of Counsel for
9 Mr. Moorehead. And I believe pursuant
10 to agreement that there's going to be a
11 witness called out of order.

12 MR. MALOFIY: I don't believe it's
13 out of order, I believe it's the next
14 and final witness.

15 HEARING OFFICER SULTANIK: That's
16 fine.

17 MR. HERRING: Where would you like
18 us to be?

19 HEARING OFFICER SULTANIK: Where
20 would you like the witness to sit?

21 MR. MALOFIY: Do you want to set
22 up a table real quick?

23 HEARING OFFICER SULTANIK: Well,
24 I'm going to ask the court stenographer
25 for that.

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(Whereupon, a discussion was held off the record.)

- - -

HEARING OFFICER SULTANIK: For the record, the witness is Mark Leibold. I believe that's L-E-I-B-O-L-D. And you can swear the witness.

- - -

MARK LEIBOLD, having been duly sworn, was examined and testified as follows:

- - -

MR. TAYLOR: Before we begin, I want to voice an objection to this witness on the grounds of relevance. I don't see what he has to add to the grounds being advanced by the School District.

HEARING OFFICER SULTANIK: The Administration is making an objection as to the relevance of this witness.

MR. TAYLOR: I ask for a proffer of his testimony.

MR. MALOFIY: This was already

1 raised and it was ruled upon by Mr.
2 Sultanik, hearing officer. So the law
3 of the case and the law as it stands
4 right now as it would be, is that he was
5 -- he was permitted to testify, a
6 subpoena was issued, it was rescheduled
7 many times. This has already been
8 addressed. We already identified the
9 reasons why it's relevant. So I think
10 that is an issue -- a ship that has
11 sailed a long time ago.

12 There's other issues that we would
13 like to address, legal issues on just
14 the representation and the involvement
15 of the PSEA before we question Mr.
16 Leibold. And that might be a couple
17 brief questions for Mr. Herring to the
18 extent he feels comfortable answering.

19 HEARING OFFICER SULTANIK: Well,
20 before we get to that, to refresh my
21 recollection and I think for the benefit
22 of all the parties here, and because
23 Counsel for PSEA is here, could you
24 assert the relevancy of this
25 proceeding -- the relevancy of this

1 testimony in this proceeding?

2 We have charges that were brought by
3 the District Administration on the basis
4 of your client's failure to perform the
5 essential job functions of position and
6 reporting to work. So how is Mr.
7 Leibold's testimony going to relate to
8 that?

9 MR. MALOFIY: A big concern of the
10 hearing officer, which was made at many
11 stages of this, was that Mr. Moorehead
12 did not follow the grievance process or
13 that he chose one process over the
14 other. It's our position that Mr.
15 Moorehead didn't choose any process,
16 he's stuck in this unfortunate situation
17 not for anything that he did by himself
18 wrong or improper.

19 Now, with the assertion that, oh, he
20 chose this process, we're here to share
21 with the hearing officer and also prove
22 that there were concerns and issues with
23 the grievance process, and that Mr.
24 Moorehead's Union abandoned him at his
25 greatest time in need; therefore, you

1 can't trust someone who abandons you at
2 your greatest time and need and provides
3 you with -- fails to provide you legal
4 advice that should be provided and fails
5 to provide you the most basic warnings
6 that should have been there.

7 Also at issue is: To what extent --
8 well, we learned in this here the FBI
9 was involved in the investigation of Mr.
10 Moorehead, that was clear. Everyone
11 doubted that, everyone said it was
12 irrelevant; hearing officer, opposing
13 counsel. Everyone sat and filibustered
14 for days about how there's no FBI
15 involvement when in fact the FBI was
16 involved. And I think there is an issue
17 to what extent Mr. Leibold knew about
18 it, when he knew about it --

19 HEARING OFFICER SULTANIK: I'm
20 going to have to take exception to
21 something you just said. First of all,
22 I did not filibuster for days over the
23 relevancy of the FBI nor did I have any
24 knowledge of the FBI. So I just want to
25 correct the record in terms of your

1 assertion.

2 MR. MALOFIY: Okay. Well, I think
3 that you did make that point an issue,
4 whether or not it was relevant, you
5 denied my subpoenas to the FBI, you said
6 they were irrelevant. And now that we
7 know is that the FBI investigated this
8 man's devices. So when you say that you
9 didn't think -- you did not -- you had
10 no position on it, I think your rulings
11 on certain matters indicate otherwise as
12 well as the transcript.

13 So, respectfully, I understand your
14 position and what you said; I disagree
15 with it and I stand on what was
16 previously stated on the record that
17 exists.

18 HEARING OFFICER SULTANIK: Mr.
19 Taylor, do you have any comments with
20 respect to the offer of proof in this?

21 MR. TAYLOR: I still feel it's
22 irrelevant. His relationship with his
23 Union is irrelevant to the order to
24 return to work. That the whole concept
25 of the FBI, whether investigated yes or

1 no, again, that's irrelevant to the
2 directive given by the School District
3 for him to return to work eight months
4 ago.

5 MR. HERRING: Am I permitted to
6 speak?

7 HEARING OFFICER SULTANIK: You
8 are.

9 MR. HERRING: Whether the Union
10 failed Mr. Moorehead or not, this is not
11 the forum for that, it's not the forum.
12 There's discovery for that process. If
13 the Union failed him, which we don't
14 agree they did, there's other places to
15 go for that; there's duty affair rep
16 cases, potentially the Labor Board, but
17 not at that particular School Board
18 hearing.

19 HEARING OFFICER SULTANIK: On that
20 particular issue, I do not have the
21 authority nor will I make a
22 determination under any circumstances
23 whether or not the Allentown Education
24 Association or the Pennsylvania State
25 Education Association failed to provide

1 an appropriate duty of representation of
2 Mr. Moorehead in these proceedings.

3 That is way beyond the scope of my
4 authority under the circumstances. And
5 I do agree with Mr. Herring that this is
6 not the avenue to address this issue.

7 The one issue that I am curious
8 about, because this is the first time in
9 this proceeding which you indicated that
10 your client was consciously addressing
11 the issue as to whether he was electing
12 the grievance procedure or this
13 procedure, that it seems to me that on
14 the one hand you have stated that your
15 client did not make an election, but
16 from what you just stated, it appears
17 that if your client did make an election
18 because you're saying that the
19 Pennsylvania State Education Association
20 and the Allentown Education Association
21 abandoned Mr. Moorehead in the process.
22 So I am actually confused at this point
23 in time as to what you want to prove
24 here.

25 MR. MALOFIY: That's absolutely

1 incorrect, we elected no process. We're
2 stuck here by virtue of the decisions
3 that the Board made, the decisions the
4 Administration made, the decisions the
5 school made. And we're stuck in a
6 process that we did not elect but we
7 have to follow and that's what we'll do.
8 It's not by our choice that we're here;
9 in fact, if it was our choice, the
10 Thomas -- Mr. Parker would not have
11 issued a statement saying it was the
12 Capitol building, which is false and
13 defamatory and never corrected.

14 And what we know, every step of the
15 way, this man has been exonerated. So
16 when you talk about if something's going
17 to be right, if we're going to abide by
18 these ideals of safety, of
19 accountability of making sure that we
20 place a man in a safe environment.

21 Well, there's still concerns as of
22 right now, is the FBI investigation
23 continuing? You want him to go back to
24 school, but you, Mr. Sultanik, over
25 here, no one to this day has said

1 whether or not the FBI investigation is
2 continuing. He has a Fifth Amendment
3 right. He has an absolute right to
4 protect himself, to protect his wife to
5 protect his children. And as we sit
6 here today, ah, counsel, learned counsel
7 want to pretend that there's not a flag
8 and the Constitution does not apply to
9 this man because he's a white Christian
10 conservative. And I think as a white
11 Christian conservative male, the
12 Constitution applies to him as it
13 applies to anyone else in the good
14 country of the United States. And this
15 is a school, and as a school, we have to
16 follow the Constitution.

17 Now, who's going to get us here on
18 the record and let me know whether or
19 not the FBI investigation is continuing?
20 Because we know King Spry and we know
21 that Fox Rothschild is now currently
22 representing the Board and also the
23 Administration and the Administration
24 now. You, Mr. Sultanik, are the
25 solicitor, are you not?

1 HEARING OFFICER SULTANIK: We've
2 gone through this before.

3 MR. MALOFIY: Are you not the
4 solicitor here today?

5 HEARING OFFICER SULTANIK: I'm not
6 here to be questioned.

7 MR. MALOFIY: You are the
8 solicitor today and that's a fact.

9 HEARING OFFICER SULTANIK: I'm not
10 answering the questions of you today.

11 MR. MALOFIY: You don't have to,
12 but you are in fact the solicitor of the
13 Allentown School District.

14 HEARING OFFICER SULTANIK: Please
15 sit down. I'm going to rule on the
16 objection.

17 MR. MALOFIY: There's a legal
18 issue that has to be addressed; by not
19 allowing me, you're showing your clear
20 bias.

21 HEARING OFFICER SULTANIK: I'm
22 going to rule on your objection.

23 MR. MALOFIY: There's other legal
24 issues that have to be addressed of Mr.
25 Fluehr. But I'm not done.

1 Right now, we have an affirmative
2 duty to protect this man's Fifth
3 Amendment right. We have an affirmative
4 duty to make sure --

5 HEARING OFFICER SULTANIK: This is
6 just a rewind of what you said in normal
7 times.

8 MR. MALOFIY: You said whether or
9 not he can return to school and whether
10 or not it's important. I want to ask
11 this man if he's aware if the FBI
12 investigation is continuing. Is his
13 Union President, who's there to protect
14 him, aware of this information?

15 HEARING OFFICER SULTANIK: Even
16 assuming that the FBI investigation is
17 continuing or not, it does not have
18 anything to do with the charges being
19 brought by the Administration.

20 MR. MALOFIY: It has to do with
21 everyone hear dripping with insincerity.

22 HEARING OFFICER SULTANIK: That's
23 like the 90th time that you said that.

24 MR. MALOFIY: Perhaps it would
25 sink in then.

1 HEARING OFFICER SULTANIK: Okay.

2 MR. FLUEHR: Hold on. I have a
3 few legal points because we do disagree
4 with what you said, your recitation on
5 the prior record. You know, this is
6 exactly why we called Mr. Leibold
7 because you personally, Mr. Sultanik,
8 kept saying, Oh, well, you needed to --
9 you chose this process over this
10 process. You should have chose the
11 grievance process.

12 To be clear, the District is saying
13 that he needs to go back to school. Our
14 position has always been the District
15 poisoned this relationship from the very
16 beginning, okay, and then continued to
17 poison it by not correcting the record,
18 okay. There's no way he can go back,
19 okay, because they betrayed him.
20 There's no way he can go back because
21 it's an unsafe environment, which was
22 testified to by Mr. Pidgeon and Ms.
23 Ramos.

24 So the notion that he can go back is
25 just absolutely, completely unfounded.

1 And so not only would a grievance
2 process -- the entire point of which
3 would be to reinstate him make any
4 sense? Okay, and it's nothing that we
5 could even choose.

6 The other point why Mr. Leibold's
7 here -- and this is to address your
8 concern about why the grievance process
9 wasn't followed -- is that in the
10 beginning of this, his Union right
11 before this meeting on January 8 at 1:00
12 p.m. abandoned him completely. His
13 attorney said, up, nope, we heard
14 something about criminal stuff and we're
15 backing out.

16 And Mr. Moorehead -- and this is all
17 going to come out when Mr. Leibold's
18 questioned, is going, why is this
19 happening? What's going on? Why is no
20 one giving me legal advice? Okay, it's
21 going to come out that the Garrity
22 notice was extremely flawed that he
23 received and gave him incorrect
24 information.

25 There was a lot of serious issues

1 with his Union which made it completely
2 impossible for him to go through his
3 Union to go grieve, you know, this
4 pre-textural basis to terminate him.

5 This is not the reason that he's
6 being, you know, on the chopping block,
7 oh, he didn't come back to work. He
8 couldn't come back to work, we've all
9 known this. The District's trying to
10 paper over an error without even issuing
11 a correction on the record.

12 So Mr. Leibold should be questioned
13 to establish that the grievance process
14 could not be followed, that there was no
15 choice on Mr. Moorehead's part. And
16 that's -- that's the legal basis of it.
17 And to say that that was never raised
18 and that didn't come up and that the
19 parties didn't know, that was absolutely
20 false. There was a specific reason why
21 we wanted him here in the first place.
22 So, you know, that's the specific legal
23 response to what you wanted.

24 HEARING OFFICER SULTANIK: So the
25 issue that you are raising right now is

1 that the reason you want to call Mr.
2 Leibold is to prove that the grievance
3 process was not either an effective
4 remedy or available to your client?

5 MR. FLUEHR: It's that and also
6 what Mr. Malofiy said, about the fact
7 that there was criminal -- pending
8 criminal prosecution of him apparently
9 -- or pending criminal investigation.
10 He wasn't informed of it by his Union.
11 And we don't know if he can even go back
12 because of that reason. And, also, we
13 couldn't go through the grievance
14 process obviously with that.

15 And it's not correct to say we made
16 a conscious decision. It was never even
17 remotely contemplated because the
18 District and the Union and the PSEA so
19 poisoned this from January 8th onwards
20 -- January 7th and January 8th.

21 And just the notion that we're all
22 sitting here as barred attorneys looking
23 at this and going, oh, well, I think
24 things were done okay, it's absolutely
25 ridiculous, it's farcical.

1 HEARING OFFICER SULTANIK: Mr.
2 Taylor, do you have any comments for
3 that position?

4 MR. TAYLOR: Yes. Mr. Moorehead's
5 dissatisfaction with his Union is
6 irrelevant to this case. There's a
7 different forum, an alternative forum.
8 He can seek whatever relief and remedies
9 he believes available to him for a lack
10 of representation, which I disagree
11 with. He can -- that's available to
12 him. Dissatisfaction with the
13 representation by your Union is not a
14 cause or excuse under the School Code
15 for what he's being charged with.
16 That's outside of the School Code.
17 We're here for a school code proceeding.

18 MR. FLUEHR: We didn't make this
19 an issue. This was not an issue. Our
20 position has always been that under 1129
21 we are entitled to a full and fair
22 impartial board hearing. And it's very
23 clear the Board's been sued, the
24 District's been sued. There's no way
25 that the Board can be impartial. But

1 hey, we've all, you know, traipsed
2 merrily along the lane ignoring that.
3 And the excuse given was, oh, well, you
4 didn't choose the grievance process.

5 Now, we never thought that made any
6 sense. But we're addressing the
7 concerns of the hearing officer, we're
8 addressing the concerns of King Spry and
9 that's why this witness is here. Okay,
10 and also to illustrate, there's no
11 possible way he can go back. And that's
12 what it comes down to. And we've been
13 through this.

14 And as Mr. Malofiy said, this is the
15 law of the case, we've rescheduled this
16 three or four times now, we've reissued
17 the subpoena, we served it and we're
18 sitting here having driven up from
19 Media, I don't understand why we're
20 having this discussion again.

21 MR. TAYLOR: Impartiality of the
22 Board has nothing to do with the
23 representation by the Union, there's
24 absolutely no connection. There's no
25 allegation that the Board conspired with

1 the Union to hurt Mr. Moorehead.

2 MR. HERRING: And even if that
3 were to be true, which it is not,
4 there's other places to go do this.

5 HEARING OFFICER SULTANIK: I'm
6 going to rule that the -- if the purpose
7 of the testimony is to have the witness
8 discuss the issue of whether or not the
9 Union was fairly representing Mr.
10 Moorehead in this process, this is way
11 beyond the scope of my authority. So
12 based upon the offer of proof at this
13 point in time, I do not see any
14 relevancy of Mr. Leibold's testimony.

15 Your client, Mr. Moorehead, could
16 testify based upon his interactions with
17 the Union that caused him to either not
18 make an election or an election of
19 remedies under the circumstances, but I
20 don't see how any of Mr. Leibold's
21 testimony would be relevant in the
22 charges that are before me as hearing
23 officer. That's my ruling.

24 MR. MALOFIY: We're going to put
25 our objection on the record. What we've

1 seen here is such clear bias of someone
2 who's a solicitor, not only for the
3 Administration but also for the Board.
4 And as you sit here claiming you're
5 impartial and unbiased, what we know is
6 you won't even go on the record and
7 answer whether or not the FBI
8 investigation is continuing. That in
9 and of itself is a violation of this
10 man's Constitutional right that you're
11 making and your firm is making.

12 HEARING OFFICER SULTANIK: I know
13 nothing about the FBI investigation.

14 MR. MALOFIY: Please let me speak.

15 HEARING OFFICER SULTANIK: No.
16 You're absolutely out of order.

17 MR. MALOFIY: Lower your voice.

18 HEARING OFFICER SULTANIK: No, I'm
19 not going to lower my voice. Please sit
20 down.

21 MR. MALOFIY: No. It's rude to
22 yell.

23 HEARING OFFICER SULTANIK: I'm
24 going to recess this hearing.

25 MR. MALOFIY: You can do what you

1 want and I'll make my record.

2 Now, you sit here claiming to be
3 fair and impartial, but we know that's
4 not true; not only on pecuniary
5 interests, not only on relationships to
6 your client.

7 And what we have here is one, two,
8 three, four barred attorneys who won't
9 tell this man if there is a continuing
10 FBI investigation. And so concerned are
11 you and everyone else that as he sits
12 here today to be protected and for his
13 Union to protect him and to provide him
14 safety and his wife safety and his
15 family safety; no one's doing that.

16 And the worst part about it, you
17 want him to return to an environment
18 where he doesn't even know if the FBI is
19 continuing. Who notified him that the
20 FBI was doing the inquisition into him
21 including his computer devices? When
22 was that notified? How about the whole
23 report that was provided to the Board
24 and the Administration was all redacted
25 and sealed saying it was confidential.

1 If anything was relied upon in
2 coming to decisions, they were outside
3 of King Spry, including the FBI records
4 which they were, they should have been
5 addressed.

6 What we have here is just proof that
7 this is a biased, unfair process and
8 procedure from everyone involved. The
9 man can't go back because he can't even
10 make a decision of the facts; most
11 important is whether or not there's a
12 continuing FBI investigation.

13 If you all want to handle this as if
14 it's a trivial matter, that's fine, but
15 you all have a responsibility, a
16 responsibility as officers to the Court
17 to protect that Constitution and tell
18 him whether or not his rights are being
19 violated. Now, you can think --

20 HEARING OFFICER SULTANIK: The
21 witness is excused.

22 MR. MALOFIY: Yeah, you can show
23 your bias, you can think this doesn't
24 matter, but you know it does. And
25 that's why you're protecting this

1 including the Board, your clients you
2 represent.

3 HEARING OFFICER SULTANIK: I do
4 not represent the Pennsylvania State
5 Education Association and they would not
6 want me to represent them.

7 MR. MALOFIY: You're representing
8 Allentown School District, it's
9 ridiculous.

10 HEARING OFFICER SULTANIK: Do you
11 have another witness?

12 MR. MALOFIY: Yeah, we'd like to
13 call Mr. Sultanik and ask about the FBI.
14 Do you want to take the stand, Mr.
15 Sultanik?

16 MR. SULTANIK: I am not going to
17 take the stand and I don't know anything
18 about the FBI investigation.

19 MR. MALOFIY: Yeah, you heard
20 about it. You heard about it last time
21 there was testimony under oath.

22 HEARING OFFICER SULTANIK: Yeah,
23 but I don't know anything independently
24 about it.

25 MR. MALOFIY: What do you mean

1 independently? You're being questioned
2 now.

3 HEARING OFFICER SULTANIK: I'm not
4 answering your questions. Do you have
5 another witness?

6 MR. MALOFIY: Yes, we would like
7 the subpoena issued for your Fox
8 Rothschild to discuss this matter.

9 HEARING OFFICER SULTANIK: The
10 answer is that you're not going to have
11 -- it's not issued.

12 MR. MALOFIY: We'd like King Spry
13 to get on the stand to testify to what
14 they know about the FBI investigation,
15 they're here right now. Is that going
16 to happen?

17 MR. TAYLOR: Objection.
18 Irrelevant.

19 HEARING OFFICER SULTANIK: The
20 answer is no.

21 MR. MALOFIY: Well, look, I think
22 the record's quite clear what's going on
23 here.

24 HEARING OFFICER SULTANIK: Do you
25 have any other witnesses?

1 MR. MALOFIY: No. Other than
2 preserving the record for the subpoena
3 that should have issued -- for the
4 failure to issue the subpoena for the
5 FBI and the other entities that do have
6 knowledge.

7 It's unfortunate that his own Union
8 President who was there to protect him
9 just walked out, didn't even testify on
10 his behalf. Whether or not the
11 objection was there, he should have.

12 HEARING OFFICER SULTANIK: You
13 have other remedies to address that, you
14 should advise your client of --

15 MR. MALOFIY: Please don't share
16 with me what remedies I might have when
17 you're not advising him of Fifth
18 amendment right, I mean it's disgusting.

19 HEARING OFFICER SULTANIK: So no
20 other witnesses?

21 MR. MALOFIY: No.

22 HEARING OFFICER SULTANIK: Are you
23 resting your case?

24 MR. MALOFIY: Yes, we are.
25 Submitting all exhibits that we've

1 shown, I'm resting our case.

2 HEARING OFFICER SULTANIK: Is
3 there any rebuttal on the part of the
4 Administration?

5 MR. MALOFIY: Hold on one second.
6 We also are going to submit documents
7 that we would have asked. Had the
8 witness been -- I can establish a record
9 even though -- had the witness been
10 asked these questions, this is what he
11 would have said and these are the
12 documents we would have used. Do you
13 mind me putting a proffer on the end as
14 to what he would have said?

15 HEARING OFFICER SULTANIK: I have
16 to ask the Administration what they're
17 position is. I don't know what you're
18 trying to do.

19 MR. MALOFIY: Had the witness been
20 allowed to be questioned, this is
21 documents we would have used and the
22 presumed answer of the questions we
23 would have asked.

24 MR. FLUEHR: To preserve the
25 record.

1 MR. TAYLOR: I guess if he wants
2 to attach to the record, that's fine,
3 subject to our objection.

4 MR. MALOFIY: Okay, that's what
5 we'll do then.

6 HEARING OFFICER SULTANIK: You can
7 submit that with -- I'm going to be
8 requesting that the parties submit
9 post-hearing briefs on the subject. So
10 you can certainly attach that to your
11 post-hearing brief and that will give an
12 opportunity to the Administration to
13 comment on that.

14 MR. TAYLOR: Okay.

15 MR. MALOFIY: Okay. All right.
16 Thank you. Appreciate it.

17 HEARING OFFICER SULTANIK: Okay.
18 Let's go off the record for a minute.

19 - - -

20 (Whereupon, a discussion was held
21 off the record.)

22 - - -

23 HEARING OFFICER SULTANIK: Back on
24 the record. Since the hearing testimony
25 has been closed, I have requested the

1 parties to prepare post-hearing briefing
2 of this matter. The Administration
3 Counsel will prepare a brief within
4 seven calender days of the receipt of
5 the transcript in this particular
6 proceeding.

7 I believe all of the other
8 transcripts have been issued. I don't
9 know, does everybody have all of the
10 other transcripts? I got two in the
11 mail so I will share --

12 MR. TAYLOR: Has everyone received
13 them, I didn't receive them.

14 HEARING OFFICER SULTANIK: If you
15 can send them to Mr. Taylor, that would
16 be fine. I think I received them
17 yesterday or the day before.

18 MR. TAYLOR: We haven't received
19 it yet.

20 HEARING OFFICER SULTANIK: Okay.
21 So the next transcript as the result of
22 today's hearing, once that gets issued,
23 you'll have seven calender days to issue
24 a brief to me and you'll send it both to
25 me and to Mr. Malofiy and Mr. Fluehr.

1 MR. TAYLOR: Correct.

2 HEARING OFFICER SULTANIK: Okay.

3 And upon receipt of that brief, Mr.
4 Malofiy and Mr. Fluehr will have seven
5 calender days to remit a brief to both
6 me and to the Administration of its
7 positions in this matter and then as a
8 result we will be issuing -- I will be
9 issuing a recommended determination.
10 And then, ultimately, the Board would
11 vote on the recommendations that I make
12 to them as hearing officer.

13 With those issues, I'm going to be
14 closing the hearing. Hearing's closed.

15 - - -

16 (Whereupon, the hearing concluded
17 at 12:43 p.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the examination under oath of the above matter, and that this is a correct transcript of the same, fully transcribed under my direction, to the best of my ability and skill.

Brenda J. Cappiello

Brenda J. Cappiello
Court Reporter
Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

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EXHIBIT 51

ALLENTOWN SCHOOL DISTRICT

In Re: The Matter of Disciplinary Hearing of Employee Jason Moorehead

EMPLOYER ALLENTOWN SCHOOL DISTRICT'S SUMMATION BRIEF

The Administration of the Allentown School District (hereafter "the District") by and through its counsel King, Spry, Herman, Freund & Faul, LLC submits the herein Summation Brief in support of its request for a recommendation of termination of employment from the Hearing Officer to the Board of Directors of the District, and states as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

Employee Jason Moorehead (hereafter "Moorehead") was employed by the District as a Social Studies teacher for sixteen (16) years, most recently as a History teacher at Raub Elementary School until his suspension pending the conclusion of a several months long internal investigation conducted by Administration. Moorehead was suspended after he posted several pictures on online media of himself in Washington, D.C. in support of the insurgency and assault upon the United States Capitol building that occurred on January 6, 2021. Moorehead's clearly self-circulated support for the insurgency caused alarm among the student body, parents and the local community in the City of Allentown where he teaches.

Of particular concern was Moorehead's support for an insurrection that was tinged in overtly racist connotations and imagery published by a teacher instructing Social Studies to a mostly minority school population. Before Moorehead returned home that night and before School officials even became aware of the situation, news of his attendance spread online throughout the community. Alarmed, Administrators suspended Moorehead while they conducted an investigation to determine the extent of his participation. Moorehead's suspension

was with pay and he lost no benefits or other rights.¹ Once it was determined that despite his disturbing posts and improper use of District owned devices, Moorehead had not been at the U.S. Capitol, he was reinstated to his position on July 16, 2021.

Evidence including extensive correspondence between the District and Moorehead was introduced at the Termination hearing through former Executive Director of Human Resources Anthony Pidgeon, former interim Superintendent Marilyn Martinez and Deputy/Acting Superintendent, Jennifer Ramos. Mr. Pidgeon testified that the District Solicitor had conducted an investigation into Moorehead's activities on the date of the insurrection. Upon conclusion of the investigation, Mr. Moorehead was ordered to return to work on July 16, 2021. (Pidgeon N.T. 69). Nonetheless, Mr. Moorehead has never returned to work and has never indicated an intention to return to work (Pidgeon N.T. 69).

Mr. Pidgeon and the then Solicitor followed up with several pieces of written correspondence, which Moorehead received, wherein they attempted to confirm whether or not Moorehead intended to return to work. (Pidgeon N.T. 70-72). One such correspondence dated August 9, 2021, explained that it was essential for the District to know his intentions in order to prepare staff. (Pidgeon N.T. 72-73). Moorehead was advised of the possibility of dismissal (Pidgeon N.T. 72-73). In correspondence dated August 16, 2021, Moorehead explicitly stated that he did not intend to return to work.

Moorehead was then provided a Loudermill Hearing on September 22, 2021, wherein he was provided an opportunity to explain his refusal to report as directed. Moorehead purportedly participated through counsel via Zoom at his Loudermill through his attendance could not be confirmed as he remained off-camera. At his Loudermill hearing, held to afford and secure his

¹ Moorehead's pay was temporarily suspended automatically by the District's computerized payroll system as a result of the lack of a building assignment when he did not report as directed.

procedural due process rights, Mr. Moorehead offered no grounds under the Pennsylvania School Code or his collective bargaining agreement that excused his ongoing failure to report to work.

Mr. Moorehead has, up to the date of this filing, refused without justification under the Pennsylvania School Code of 1949 to return to his classroom and otherwise report for work as directed by his supervisors. Three days of testimony and evidence were presented to Hearing Officers Jeffrey Sultanik and Samuel Hazz on November 22, 2021, December 14, 2021 and March 16, 2022.^{2 3}Notably, Mr. Moorehead did not give a statement or testify during his own Termination hearing but instead relied upon statements and assertions made by his counsel which were without a basis in fact or law to justify his refusal to return to work. At the final March 16, 2022 hearing, Hearing Officer Sultanik ordered the exchange of summation briefs upon receipt of the hearing transcripts.

II. APPLICABLE LAW

The termination of a professional employee is governed by the Pennsylvania School Code, 24 P.S. §11-1122. Causes for termination of contract which provides:

- (a) The only valid causes for termination of a contract heretofore or hereafter entered into with a professional employe shall be immorality; incompetency; unsatisfactory teaching performance based on two (2) consecutive ratings of the employe's teaching performance that are to include

² Moorehead through counsel continually attempted to contest the legitimacy of the process. Specifically, Moorehead ignored a significant body of case law that recognizes termination hearings conducted by hearing officers or less than a full board under the Pennsylvania School Code as a standard process. See Fadzen v. School District of Philadelphia 2019 WL 1501122 (Pa Cmwlth 2019); Philadelphia School Dist. v. Puljer; 500 A.2d 905 (Pa. Cmwlth. 1985) ; Sertik v. School District of Pittsburgh 584 A.2d 390 (Pa. Cmwlth. 1990); Kaczmarik v. Carbondale School District 625 A.2d 126 (Pa. Cmwlth. 1993); Moreover, a District's Solicitor, even where he may have played a role in the pre-investigation, which was not the case in the instant matter, may still serve as a hearing officer making admissibility determinations. Behm v. Wilmington Area School District; 996 A.2d 60 (Pa. Cmwlth. 2010).

³ Similarly, without basis or foundation, Moorehead attacked the Board of Directors on the basis of alleged bias. For instance, Moorehead cited to the activities of Promise Neighborhood but failed to bring a witness or any other evidence regarding the connection between Promise Neighborhood and his refusal to report to work. Moreover, the presence of bias does not automatically preclude consideration of a Board member at a school board hearing under the rule of necessity. See Stroudsburg Area School District v. Kelly, 701 A.2d 1000 (Pa. Cmwlth. 1997).

classroom observations, not less than four (4) months apart, in which the employe's teaching performance is rated as unsatisfactory; intemperance; cruelty; persistent negligence in the performance of duties; wilful neglect of duties; physical or mental disability as documented by competent medical evidence, which after reasonable accommodation of such disability as required by law substantially interferes with the employe's ability to perform the essential functions of his employment; advocacy of or participating in un-American or subversive doctrines; conviction of a felony or acceptance of a guilty plea or nolo contendere therefor; persistent and wilful violation of or failure to comply with school laws of this Commonwealth, including official directives and established policy of the board of directors; on the part of the professional employe: Provided, That boards of school directors may terminate the service of any professional employe who has attained to the age of sixty-two except a professional employe who is a member of the old age and survivors insurance system pursuant to the provisions of the act, approved the first day of June, one thousand nine hundred fifty-six (Pamphlet Laws 1973). In such case the board may terminate the service of any such professional employe at the age of sixty-five or at the age at which the employe becomes eligible to receive full benefits under the Federal Social Security Act.

(b) Nothing within the foregoing enumeration of causes in subsection (a), shall be interpreted to conflict with the retirement of professional employes upon proper evidence of disability, or the election by professional employes to retire during the period of voluntary retirement, or the authority of the board of school directors to require professional employes to retire during said period of voluntary retirement, or the compulsion on the part of professional employes to retire at the attainment of age seventy.

III. LEGAL ARGUMENT

A. MOOREHEAD'S CONDUCT CONSTITUTES A RECOGNIZED GROUNDS FOR TERMINATION UNDER THE PENNSYLVANIA SCHOOL CODE

This is a simple case. Termination is an obvious conclusion. Moorehead has not returned to work and has not given any indication that he intends to do so. It is the Administration's contention that Moorehead has acted with a persistent negligence in the performance of his teaching duties and is also guilty of a willful neglect of duties. The evidence introduced at the Loudermill hearing and again at his termination hearing was overwhelming and without dispute that Moorehead was ordered to return to work on July 16, 2021, and he failed to do so. The

Commonwealth Court has noticed and recognized that a violation of the School District's Rules and Orders are sufficient to justify termination of a professional employee. Horton v. Jefferson County Technical School, 630 A.2d 481.

Failure to return or report to work is a recognized grounds for dismissal. See, Board of School Directors of Fox Chapel v. Rossetti, 488 Pa. 125, 411 A.2d 486 (1979) holding the School Board properly dismissed a teacher for failure to return to work after her request for leave, including breast-feeding, was denied. Moreover, there is caselaw recognizing that an employee may be dismissed for insubordination, Board of Public of Phila v. August, 406 Pa. 229, 177 A.2d 809 (1962). See also, Clairton School Dist v. Strinch, 50 Pa. Cmwlt. 389, 413 A.2d 26 (1980).

Moorehead, through his counsel, has repeatedly asserted that he is being punished for supporting the insurrection. However, Pennsylvania case law is clear that a Superintendent has the authority to question an employee whether the employee has committed a crime or conducted himself in a manner inimical to the interest and welfare of the school where he is employed. . Kaplan v. School Dist. of Phila., 388, Pa. 213, 130 A.2d 672 (1957). Moreover, Pennsylvania courts have noted that the influence of a teacher upon his pupils is not limited to what he says and does in the schoolroom. *Id.* As such, the District was warranted in investigating whether Mr. Moorehead participated in and supported unlawful conduct which occurred when the U.S. Capitol was breached contesting a lawful election. ⁴

Mr. Moorehead was ordered to return to work nearly eleven (11) months ago. When asked by District counsel and then again by the Hearing Officer, whether Mr. Moorehead wanted to return, his counsel either explicitly said no or refused to confirm his return. Throughout three

⁴ There have been well over 60 Federal and State lawsuits that have unanimously concluded that there was no widespread fraud that affected the Presidential election. Moreover, as of May 20, 2022, 837 people have been charged with crimes relating to the insurrection Mr. Moorehead attended.

days of testimony Moorehead refused to identify any section of the Pennsylvania School Code, Pennsylvania case law or the relevant Collective Bargaining Agreement that excused his conduct and continued refusal to return or report to work. As such, Administration is entitled to a recommendation to the Board directing termination from his employment.

B. MOOREHEAD'S PROFFERED REASONS HAVE NO BASIS IN LAW OR FACT

Mr. Moorehead's counsel offered numerous reasons in an ad nauseum fashion in an attempt to explain or excuse his client's conduct including the alleged failure of the former Superintendent to issue a follow-up online letter to the community apologizing to Moorehead, the alleged danger to Moorehead's physical safety, a perceived ongoing investigation by the F.B.I and failure of the union to defend Moorehead.

Likewise, Moorehead continually argued or alleged a First Amendment violation. The assertion of an alleged First Amendment violation is not a recognized defense to a charge of persistent or willful neglect of duties violation under the Pennsylvania School Code. Moreover, it is clear that urging an imminent violent overthrow of government was and is not protected speech. See, *Shenk v. U.S.*, 248 U.S. 47 (1919). What was missing from Moorehead's defense and presentation at the hearing was any statute, or case law recognizing any of the above asserted contentions as an excuse or even mitigating factor under the controlling body of agency law, the Pennsylvania School Code.

Moorehead's counsel proffered a litany of reasons that were nothing but Red Herrings intended to prolong the administrative process, provide an opportunity and forum to

unprofessionally insult District counsel and the Hearing Officer, and obtain discovery in support of a Writ of Summons and anticipated litigation against the District.⁵

For instance, the online letter posted by former Superintendent Thomas Parker never identified Moorehead nor provided any information or details that would make his identification ascertainable. Any threats that Moorehead received were the result of his online postings which became known to the public before Administration ever became aware of his activities.

Moorehead publicly identified himself and to the extent any danger existed, he created this condition by his own actions. Deputy/Acting Superintendent Jennifer Ramos testified that Moorehead aborted any attempts to address his safety concerns when she explained “We didn’t have the opportunity to do that because he didn’t come in to meet with our human resources department to determine his placement [for the upcoming year] (Ramos N.T. at 90).

It must also be remembered that Moorehead offered no evidence into the record of community outrage that was caused by the District Administration. Mr Moorehead offered no testimony from witnesses, nor did he testify himself as to any outrage or how he suffered from same. Arguments of counsel, regardless of sustained objections, no matter how often repeated, is not evidence.

Moorehead continued to assert that the District had a duty to advise him of any possible investigations, including ongoing updates by the F.B.I. There is no such right or duty under the law and Moorehead’s counsel repeatedly failed to identify any legal authority when requested at the Termination hearing. Though there was testimony that the F.B.I. had at one point reached out to Administration which resulted in one follow-up call, early in the internal investigation with the District’s Solicitor, there was no testimony or evidence that the F.B.I. initiated an

⁵ Moorehead has already availed himself of the proper forum for review and possible resolution of his claims, the judicial system.

official investigation relevant to his employability or that any such investigation was ongoing. Moorehead's lawyer has never cited to any case law holding that an employer contacted by the F.B.I. has an affirmative duty to notify the employee, monitor the progress of such an investigation and notify the employee of the completion and conclusions of the investigation. Moreover, Moorehead has failed to cite any case law mandating the F.B.I. provide this information to the employer in the first instance.

Jennifer Ramos explained that the F.B.I.'s inquiry into Moorehead was actually prompted by his own online posting activity and that Administration did not share any information with law enforcement. (Ramos N.T. 109-110, 113). Equally important, former Superintendent Dr. Marilyn Martinez testified that she did not even rely on the F.B.I. investigation in making the determination to bring him back to work. (Martinez N.T. 34). In fact, there was no evidence that the F.B.I. ever conducted an investigation of Moorehead. Moreover, Moorehead's counsel stated emphatically on the record that Malofiy would not return even if the alleged investigation had been closed. (During Martinez N.T. 43).

Lastly, Moorehead expressed disappointment and outrage that the Allentown Education Association (AEA), Moorehead's collective bargaining unit, did not assist him throughout the process and objected to the subpoena they received for AEA President Mark Leibold to testify at the hearing. The Hearing Officer reviewed Moorehead's proffer and determined the representation issue to be irrelevant and precluded all such testimony relevant to the obligations of the union.

The District had objected and the Hearing Officer agreed that any deprivation of rights Moorehead feels he suffered in this regard were: 1) against the AEA, not the District and 2) should be resolved in a legal proceedings other than his termination hearing where the issue was

irrelevant and outside of the scope. Furthermore, Moorehead was ably represented throughout the process by zealous counsel.

Most tellingly, Moorehead sought the assistance of the union at his hearing but not during the selection of remedies phase which he effectively waived by only requesting a public hearing not an arbitration. Moorehead's breach of representation and grievance claims are more properly before the Pennsylvania Labor Relations Board not a local agency fact finding and recommendation proceeding. As such, the proffered reasons offered by Moorehead have no basis in law or fact and are irrelevant to the request before this hearing officer and the ultimate decision for the Board.

IV. CONCLUSION

Jason Moorehead was ordered to return to work in July 2021 following an internal investigation into the nature of his involvement and participation into an insurgency and attack on the United States Capitol building. Knowledge of his participation and support of the insurgency in the community in which he teaches was solely the result of his online activities including postings of his location along with disturbing comments and captions of the events. Despite being ordered to return to work, Mr. Moorehead has refused to do so for almost a year.

In sum, Mr. Moorehead has offered no valid reason under the Pennsylvania School Code or his Collective Bargaining Agreement for his refusal to report. As such, the Administration believes the evidence at Moorehead's Loudermill and Termination hearings justify a termination of his employment and respectfully request a recommendation to the Board of Directors that Jason Moorehead be terminated immediately.

Respectfully submitted,
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Date: May 26, 2022

EXHIBIT 52



FRANCIS ALEXANDER LLC

JUNE 2, 2022

Re: MOOREHEAD V. ALLENTOWN SCHOOL DISTRICT ET AL.
Teacher Jason Moorehead's Post-Board Hearing Brief

Jason Moorehead was a teacher for 17 years at Allentown School District and has a spotless record. The attempt to terminate him on pretextual grounds is morally, ethically, and legally wrong.

He was illegally suspended and defamed by the District as an “insurrectionist” who rioted at the Capitol Building on January 6, 2021. The District eventually cleared him, privately writing:

After fully investigating your involvement in the events of January 6, 2021, in Washington D.C., the district has concluded that your presence at the January 6th gathering did not violate School Board policy 419 relating to teacher non-school activities.

Despite this, the District never corrected or retracted its defamatory statements to the public and cleared his good name.

A Board Hearing has now been completed regarding the District's request to terminate Mr. Moorehead, ostensibly for “Willful Neglect of Duties” for not showing up to work. The District has submitted a post-hearing brief, and Mr. Moorehead now responds.

Mr. Moorehead objects to this proceeding in its totality, both procedurally and substantively, as he has done since the beginning of this debacle. This proceeding is illegitimate and a sham, and one which no board member ever saw fit to appear for. He incorporates his prior on-record objections by reference and reiterates them in this memo. His 1st, 4th, 5th, 6th, and 14th Amendment rights have been violated many times over.

The factual evidence and legal grounds for this objection are as follows:

I. The Charge that Mr. Moorehead Failed to Show up to Work is Pretextual and Nonsensical; Mr. Moorehead Cannot Return to Work Due to the Hostile Environment the District has Created, as Even the District's Own Executive HR Director was Forced to Admit

The District's attempt to ignore Mr. Moorehead's inability to return to Allentown School District, and absurdly fire him for “not showing up to work,” is not only nonsensical, but more proof of illegal discrimination and malicious prosecution.

On January 7 and January 8, 2021, the District publicly and falsely accused Mr. Moorehead of attacking the U.S. Capitol Building, participating in a riot and insurrection, and said that he was being suspended indefinitely for “subversive” and un-American conduct. These charges were leveled in a press release, and in comments to news media, even though the Collective Bargaining Agreement forbids public criticism of a teacher. Even though Mr. Moorehead adamantly denied he was anywhere near the Capitol Building to the District, the District never corrected these false statements.

In February 2021 Board Members colluded with community organizations to push this false and defamatory narrative *at board meetings* to attack Mr. Moorehead. This included Promise Neighborhoods, an official ASD partner, who posted on social media in advance of the February 11, 2021 meeting, asking

their members to attack Mr. Moorehead at the meeting as a teacher who “participated in the riot at the Capitol.” ASD board member Lisa Conover sat as a board member on Promise Neighborhoods, and ASD board member Phoebe Harris reposted a Promise Neighborhood advertisement asking that people speak out against Mr. Moorehead at the February 11 board meeting. (Note that ten pages of documentary evidence of this collusion was submitted to the hearing officer on December 7, 2021).

At the February 11 Board Meeting, Lisa Conover presided. Members of Promise Neighborhood attacked Mr. Moorehead over and over with false statements—exactly as the Board, Conover, and Harris had planned.

The Board and Conover were even cautioned by their own counsel at this board meeting not to repeat or allow defamatory statements regarding Mr. Moorehead. The Board and Conover emphatically rejected this advice, and in fact encouraged the vitriol against Mr. Moorehead.

It was only much later learned that the District also assisted the FBI in targeting Mr. Moorehead. The district initially acted as a secret arm of the FBI and questioned Mr. Moorehead without informing him of his rights. Then, upon realizing that they had no evidence Mr. Moorehead did anything wrong, and desperate to justify the defamatory statements and suspension, they reached out to the FBI for dirt on Mr. Moorehead. They then obtained Mr. Moorehead’s electronic devices under false pretenses so the FBI could search them, again violating his constitutional rights. Even now, the District refuses to disclose the extent of the FBI involvement and whether Mr. Moorehead is under active criminal investigation. The conduct of the District and Board has been utterly deficient and self-interested.

In July 2021, after six months of baseless suspension without notice or hearing, the District admitted in a private letter that Mr. Moorehead had not attacked the Capitol Building: “After fully investigating your involvement in the events of January 6, 2021, in Washington D.C., the district has concluded that your presence at the January 6th gathering did not violate School Board policy 419 relating to teacher non-school activities.” It then nonsensically said it would reinstate him if he took “cultural competence” classes on African American and Hispanic history. It also said that he was being removed from his position at Raub Middle School and his new position and location would be later determined.

Not only is Mr. Moorehead not going to submit to Stalinist reeducation classes as if he did something wrong—the topic of the courses utterly unrelated to his situation—but he and his counsel repeatedly explained that there was no way he could return to ASD given the hostile and dangerous environment the District and Board had created. Making matters worse, the District and Board refuse, to this day, to issue a public correction and retraction, which perpetuates the unsafe environment within ASD for Mr. Moorehead.

Both counsel and Mr. Moorehead wrote to the District explaining this. Mr. Moorehead wrote to the Executive HR Director Anthony Pidgeon in August 2021, stating: “There’s no way I can return to the Allentown School District, given the way the District has publicly villified and defamed me, poisoned the community against me, put me and my family’s safety in jeopardy, and never corrected the record.”

At the Board Hearing, the HR director Anthony Pidgeon admitted that there was a hostile and dangerous environment in ASD. Mr. Pidgeon was asked about Mr. Moorehead’s concerns:

MR. MALOFIY: Now to be clear after receiving this letter and after understanding the concern that Mr. Moorehead had in regards to [accountability], correcting the record, and his safety, what, if anything, did you do, or what if anything did anyone do, or was there any communication about addressing that concern of Mr. Moorehead?

MR. PIDGEON: So what our intent was when we sent the initial letter was to have a conversation with Mr. Moorehead to see where we could place him. Because the initial letter said a teaching position, *not his previous teaching position. We realized there might have been some challenges with that.* So I planned on having a conversation with Mr. Moorehead to get his input onto where he would feel comfortable and use his Certification within the District.

Day 1, at p.189 (emphasis added). He later continued:

MR. MALOFIY: If I may just ask you, you said there were challenges. What kind of challenges were there at Raub? You identified there were challenges at Raub, in placing him back where he was?

MR. PIDGEON: I didn't say there were challenges at Raub, *I said there were challenges for Mr. Moorehead at Raub.*

MR. MALOFIY: Why?

MR. PIDGEON: *Because of the community outreach that we heard at the Board Meetings made some reference to Raub.*

....

MR. MALOFIY: What, if anything, did you do to address his concerns about [accountability], safety, and making things right?

MR. PIDGEON: I believe I referred this back to the Superintendent and our Solicitors.

....

MR. MALOFIY: What did they do? Not the communications, what did they do, if anything?

MR. SULTANIK: If you know?

THE WITNESS: I don't know.

MR. MALOFIY: *So you don't know if anyone did anything in response to his concerns; fair statement?*

MR. PIDGEON: *Correct.*

Day 1, at p.195-200 (objections omitted) (emphases added). It cannot be overstated that these “challenges” were directly created by the Board and its members working with Promise Neighborhoods to signal boost ASD’s defamation of Mr. Moorehead and attack him at the board meeting.

At all times Mr. Moorehead and his counsel have consistently pointed out that due to the hostile work environment created by the Allentown School District and the Board, he cannot return. It is not that he will not, *he cannot*; it would be an unacceptable risk to his safety. Moreover, his employer utterly betrayed him, publicly humiliated and defamed him, and refused to correct the record.

The case law is unambiguously clear that an employee does not have to return to a hostile environment “because of unendurable working conditions.” Hill v. Borough of Kutztown, 455 F. 3d 22 fn8 (3d Cir. 2006) (holding that at motion to dismiss stage, allegations of defamation and 1st Amendment and 14th Amendment retaliation against employer sufficient to establish hostile work environment which did not require a return to work and in fact established a constructive termination if true).

Furthermore, case law from Pennsylvania courts applying an almost identical standard also voluminously establish that no return to work is possible where an employer had wronged an employee. See Indiana Univ. of Penn. v. Unempl. Comp. Bd. Of Review, 202 A.3d 195 (Pa. Cmwlth. 2019) (stating that treatment of claimant during investigation that called into question her character and integrity created hostile work environment that made return to work impossible); Porco v. Unempl. Comp. Bd. of Review, 828 A.2d 426, 428 (Pa. Cmwlth. 2003) ("In hostile work environment cases, Pennsylvania courts for half a century have found that . . . unjust accusations represent adequate justification to terminate one's employment. . . ."); Arufo v. Unempl. Comp. Bd. Of Review, 37 Pa. Commonwealth Ct. 555 (1978) (stating that an unjust "accusation [that is] ... a very real, substantial, and serious personal affront to claimant's character and integrity" creates an "untenable" employment situation).

Moreover, illegal discrimination against an employee irretrievably breaks an employment relationship. See Taylor v. Unemp. Comp. Bd. of Review, 378 A. 2d 829 (Pa. 1977) (stating that illegal "discrimination is cause of a necessitous and compelling nature"); Brown v. Unemployment Comp. Bd. of Review, 780 A. 2d 885 (Pa. Cmwlth. 2001) (stating "there is no question" that illegal discrimination renders an employment relationship broken).

It cannot go unmentioned that the biased and illegitimate hearing officer, Jeffrey Sultanik, who is in fact the solicitor for the District administration and Board, repeatedly abandoned his proclaimed neutrality during the hearing. One such instance was when Mr. Moorehead's counsel pointed out that the hostile and dangerous environment, and illegal discrimination, clearly prevented Mr. Moorehead from returning. Mr. Moorehead's counsel had also submitted a detailed brief with the above-case law to Mr. Sultanik. Mr. Sultanik then absurdly stated:

- MR. SULTANIK: Show me one case in Pennsylvania where this kind of legal theory applies in a nonsexual harassment situation, where an employee was reinstated by management to his former position, or to a position in the School District, and where hostile work environment prohibited or caused the employee to prevail under the circumstances, in a nonsexual harassment environment. Do you have any cases to establish that?
- MR. MALOFIY: The fact that you sit here as a Hearing Officer and you question the Constitution and the violations and not --
- MR. SULTANIK: That wasn't the question. I asked you for case authority.
- MR. MALOFIY: It is littered, littered in the Case Law.
- MR. SULTANIK: Give me one case.
- MR. MALOFIY: I don't have to give you one case right here.
- MR. SULTANIK: I'm asking you as the Hearing Officer to give me --
- MR. MALOFIY: We briefed the issue. It's all there. If you failed to read it this morning, I can't help you.

Day 1, at p.192-93. The nostrum that sexual harassment is the only type of discrimination that results in a hostile environment, or a constructive termination, is utterly baseless. This is the type of argumentation one expects to see from a defense attorney advocating for his client—which is exactly what Mr. Sultanik was doing.

The District admitted in the July 2021 letter that there was never any basis to terminate Mr. Moorehead; under federal law, and analogous state standards, if "an employee can show that the agency

knew that the reason for the threatened removal could not be substantiated, the threatened action by the agency is purely coercive.” Schultz v. U.S. Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987). Where there is no cause for a threatened termination “the choice between resignation and the initiation of termination proceedings [is] ‘*purely coercive.*’” Judge v. Shikellamy School District, 905 F. 3d 122, 123 (3d Cir. 2018); Stone v. Univ. of Maryland Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988) (stating “the mere fact that the choice is between comparably unpleasant alternatives — e.g., resignation or facing disciplinary charges — does not of itself establish that a resignation was induced by duress or coercion, hence was involuntary. This is so even where the only alternative to resignation is facing possible termination for cause, *unless the employer actually lacked good cause to believe that grounds for termination existed.*” [emphasis added]).

What the District did to Mr. Moorehead was a coercive malicious prosecution, and the attempt to force him to return to ASD to cover up their illegal conduct, and then fire him for pretextual reasons when he refused, is legally indefensible.

In summation, the District defamed Mr. Moorehead, the District and the Board whipped the public and school community up against him despite knowing the claims about him were false, they violated the CBA’s promise of confidentiality, they acted as a secret arm of the FBI without informing him of his rights, they want him to return to ASD without disclosing to him if he is under active criminal investigation, they refuse to publicly correct the grievous harm done to his reputation, they admitted they knew it was dangerous and untenable to reinstate him to the District because of the community outrage at board meetings they had ginned up, they said he could only come back if he took diversity classes, and they now absurdly want to pretend as if he simply did not show up for work.

The simple reality is that the District has utterly poisoned the relationship. It is absolutely absurd and breathtakingly dishonest to now attempt to fire Mr. Moorehead on the fake reason that “he did not show up to work,” or neglected his duties, in light of what has occurred. This is blatant pretext.

The correct course of action was for the District and Board to come to terms with what they did and resolve this as amicably as possible; instead, they have been unable to cast aside their ideological animus for Mr. Moorehead, leading to this contemptuous travesty of justice. As counsel for Mr. Moorehead repeatedly explained at the Board Hearing, this proceeding is “dripping with insincerity.”

II. The Board and Hearing Officer(s) are Biased and Cannot Decide this Matter; This Matter has been Predetermined and is a Sham

The Board is biased and cannot decide this matter because it is not a fair and impartial arbiter as required by state law. They are defendants in a lawsuit filed by Mr. Moorehead, and they directly participated in the attacks on Mr. Moorehead from January to July 2021.

The Constitution and School Code require an impartial arbiter at a final hearing. Section 1129 provides, in more complete pertinent part:

After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and *after full, impartial and unbiased consideration* thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the

board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed.

Section 1129 of the Code, 24 P.S. § 11-1129 (emphasis added). This is also required by the Constitution, as held by the Supreme Court of the United States:

The court reached its conclusion of unconstitutionality by alternative lines of argument. *The first rested upon the principle that tribunals must be impartial. The court thought that the impartiality of the carrier's hearing officers was compromised by their "prior involvement and pecuniary interest."* *Id.*, at 414. "Pecuniary interest" was shown, the District Court said, by the fact that "their incomes as hearing officers are entirely dependent upon the carrier's decisions regarding whether, and how often, to call upon their services."¹ *Id.*, at 415. Respecting "prior involvement," the court acknowledged that hearing officers *personally* had not been previously involved in the cases they decided. But it noted that hearing officers "are appointed by, and serve at the will of, the carrier [that] has not only participated in the prior stages of each case, but has twice denied the claims [that] are the subject of the hearing," and that five out of seven of Blue Shield's past and present hearing officers "are former *or current* Blue Shield employees." *Id.*, at 414. (Emphasis in original.) See also 42 CFR § 405.824 (1980). The District Court thought these links between the carriers and their hearing officers sufficient to create a constitutionally intolerable risk of hearing officer bias against claimants.

Schweiker v. McClure, 456 US 188 (1982) (emphasis added) (cited by McDaniels v. Flick, 59 F. 3d 446 (3d Cir. 1995)). Furthermore, in Dept. of Education v. Oxford Schools, 24 Pa. Commonwealth Ct. 421, 424-25 (Pa. Commw. 1976), the Commonwealth Court noted that the School Code's requirement of impartial and unbiased consideration can be violated even if inadvertent.

The Board was aware of and ratified the initial suspension and public attack on Mr. Moorehead by the District. Following the suspension, despite being aware that Mr. Moorehead had not attacked the Capitol Building, the Board and its members then colluded with community groups to attack Mr. Moorehead at Board Meetings with further defamatory statements that he rioted at the Capitol Building. Yet, the Board knew the whole time he was not at the Capitol Building. Nowhere did the Board ever demand that Mr. Moorehead's name be cleared and that a correction/retraction be issued by the District.

The Board is also politically biased against Mr. Moorehead. The Board and District is comprised overwhelmingly of liberal Democrats virulently opposed to Mr. Moorehead's politics. The treatment of Moorehead, the promulgation of false accusations against him, and then the adamant refusal to correct the record (to this day) while the District and Board tried to devise a "fix," clearly indicate political bias.

As a result, the District, the Board, and the Members were all sued by Mr. Moorehead in the Lehigh County Court of Common Pleas in September 2021.

Mr. Moorehead also asked for subpoenas for testimony be issued to the Board Members to prove their bias. The biased hearing officer denied these subpoenas, because he actually represents the Board and its members and wants to protect them. Indeed, despite this being a "Board Hearing" not a single Board Member ever graced the attorneys and witnesses with their presence, which violates section 1129 and defeats the purpose of having a *board* hearing. Mr. Moorehead objected to their absence and pointed

out they cannot evaluate credibility if they are not present for the testimony and are instead hiding from having to testify. Day 1, at p.12.

The hearing officer, Mr. Sultanik, who was present for the hearing, claimed he would be giving a recommendation to the Board regarding Mr. Moorehead's employment. While he proclaimed he was neutral, he is actually the solicitor for the District Administration and Board and is being paid by them. As solicitor, his loyalty is to the District Administration and the Board, not to Mr. Moorehead. Mr. Sultanik can claim he is neutral, but it does not make it so and he has a serious conflict of interest. How can he govern the hearing and make a recommendation in a fair and unbiased manner compliant with Section 1129? It is plain that Mr. Sultanik and his firm have an unwaivable conflict of interest, and that his participation as a so-called neutral hearing officer creates an impermissible appearance of impropriety.

Moreover, the resolution by the board appointing Mr. Sultanik as hearing officer appointed him individually. Before the hearing, on November 19, 2021, Mr. Sultanik wrote: "I made it very clear that Fox Rothschild represents the district in its capacity as solicitor. In the context of this particular hearing I am representing the interests of the board and King Spry is representing the interests of the administration." Yet, at the hearing, another Fox Rothschild attorney, Samuel Haaz, sat as a hearing officer with Mr. Sultanik, which was objected to. Day 1, at p.121-23. The fact that Fox Rothschild sat as a hearing officer in addition to Mr. Sultanik, while the firm was also admittedly solicitor for the District, is a serious conflict of interest.

Additionally, there is the matter of FBI involvement. It is clear that the Board and District secretly acted as an arm of the FBI and attempted to have Mr. Moorehead incriminate himself. He was never warned of his right against self-incrimination or right to counsel because he had no idea he was actually being interrogated by law enforcement. He was then forced to turn over devices, without any disclosure that it was being done with the intent and purpose that law enforcement search the device for incriminating evidence. This is a serious violation of his Fourth, Fifth, and Sixth Amendment rights. That he was not informed of his rights by the District and Board is not only a constitutional violation but shows that the Board was trying to find some basis on which to have their political opponent charged with a crime.

Lastly, the hearing is predetermined and pretextual for all the reasons above. Note that before serving any Loudermill notice, the District terminated Mr. Moorehead's pay in or around August 2021. This termination of pay unambiguously indicates that his termination was already decided.

Given all these facts, the Board, Mr. Sultanik, and Fox Rothschild have no business adjudicating or presiding over this matter as it creates, at a minimum, the appearance of impropriety. See In Interest of McFall, 533 Pa. 24, 37 (Pa. 1992) ("A tribunal is either fair or unfair. There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings. A trial judge should not only avoid impropriety but must also avoid the appearance of impropriety.").

III. The Hearing Officer's Attempt to Claim that Mr. Moorehead is Not Entitled to a Fair Hearing is Outrageous and Illegal

The School Code provides that Mr. Moorehead, upon receiving a statement of charges, is entitled to choose between a grievance proceeding or a board hearing. The School Code, as noted, states in section 1129 that if Mr. Moorehead choose a board hearing, he is entitled to a "full, impartial and unbiased" hearing. Indeed, whatever remedy is elected, it must be impartial, fair, and unbiased.

Yet, at the Board Hearing, the illegitimate hearing officer outrageously claimed that because Mr. Moorehead did not choose to grieve this issue via the CBA, and instead chose a board hearing as he is entitled to do, that therefore he is not entitled to a fair and unbiased hearing:

MR. MALOFIY: You have to be fair and impartial. We're here for a fair and impartial Hearing. If Fox [Rothschild] can't be, they shouldn't be here today.

MR. SULTANIK: You asked me the question of why is the Collective Bargaining Agreement relevant. You have a full and fair remedy under the Collective Bargaining Agreement with an impartial Arbitrator.

Day 1, at p.46. Mr. Sultanik went on to argue that because Mr. Moorehead did not elect to grieve under the CBA under Section 1133, which Mr. Sultanik said would have been impartial, that therefore Mr. Moorehead was not entitled to impartiality from the board or the hearing officer. Day 1, at p.49-50. He went on to state:

I am dismissing the objections with respect to the Board and Hearing Officer bias and impartiality, because of the lack of addressing the election of remedies issue in the Brief. And ultimately, the Board will make a decision on that issue once the Transcript is elicited and forwarded to the School Board for review.

Day 1, at p.59. Election of remedies is completely irrelevant to whether, upon a board hearing taking place, the board hearing has to be “fair, impartial, and unbiased.” It obviously does under Section 1129, as would a grievance procedure. That a hearing officer would claim otherwise is unbelievable.

Furthermore, Mr. Moorehead extensively addressed Election of Remedies in his argument at the hearing itself as noted, but also previously in his briefing:

This issue is irrelevant. The School Code says that a professional is entitled to an impartial and full hearing. It does not matter how, or why, the parties arrived at this destination. The notion that not selecting arbitration means that section 1129 of the School Code can be ignored is nonsensical and indicates that the hearing officer is acting in a biased and adversarial manner.

See Memo on Bias and Election of Remedies. The notion that this was not adequately developed or preserved is a baseless assertion by the so-called hearing officer.

Indeed, Mr. Moorehead consistently argued that his union had abandoned him in January 2021 making it impossible for him to even consider grieving under the CBA. Furthermore, the point of grieving would be to keep him as an employee of the District, but, as his counsel pointed out, Mr. Moorehead cannot return to the District because it is unsafe and extraordinarily hostile. Day 3, at p.15.

Nonetheless, Mr. Moorehead subpoenaed his union representative Mark Leibold to testify to establish that Leibold abandoned him, failed to tell him he was under FBI investigation, and that grieving under the CBA was not possible. The hearing officer did not permit Leibold to testify, thus preventing Mr. Moorehead from creating a fulsome record and contradicting the hearing officer’s baseless assertion he should have chosen to grieve. Had Leibold testified, Mr. Moorehead would have asked him (1) if he knew the FBI was investigating Moorehead on January 8, 2021, or at any other time, (2) how he learned about the FBI investigation, (3) why Mr. Moorehead was not notified of the FBI involvement, (4) why

Leibold stated that he could do nothing for Moorehead at the Jan. 8, 2021 meeting, (5) why Jesika Steuerwalt abandoned Mr. Moorehead before the Jan. 8 meeting, (6) why the union never publicly supported him or demanded a retraction from the District despite Mr. Moorehead's adamant denial he was near the Capitol Building, (7) what steps could, should, and were taken by the union to protect a teacher where his constitutional rights and CBA rights were being violated, (8) what steps could, should, and were taken where there is an unsafe environment for a teacher, and (9) why at no point the union sought to push back on the wanton breach of the CBA's confidentiality provision by the District.

The unfair consideration of the pretextual charge against Mr. Moorehead by the biased Board, presided over by the board's own attorney masquerading as an unbiased hearing officer, is improper.

IV. The Cover Up of the FBI Involvement and Whether there is an Active Criminal Investigation into Mr. Moorehead regarding January 6, 2021, Is a Egregious Violation of his Constitutional Rights

Before the hearing, Mr. Moorehead asked for subpoenas to address the FBI involvement and investigation of Mr. Moorehead. The hearing officer refused to authorize any of the subpoenas for documents or testimony. Then, on Day 2 of the hearing, assistant Superintendent Jennifer Ramos testified that the FBI had contacted the School District and was in fact involved in investigating Mr. Moorehead. Day 2, at p.101-121. Previously, the District and the biased Hearing Officer had adamantly denied there was evidence the FBI was involved. It was also disclosed that the District had special binders on the Moorehead investigation which have never been produced

At this point, additional discovery on the binder, which contained the results of the investigation, was requested. This was denied based on a frivolous assertion of privilege, even though it contained the most critical evidence about the investigation. Mr. Moorehead also asked for additional discovery on the FBI issues to address whether Mr. Moorehead was still under active investigation and whether the District had acted as a secret arm of the FBI. The biased hearing officer/solicitor again denied this request for discovery. There is no question that Mr. Sultanik was protecting his actual clients—the District Administration and Board—by denying these requests.

Even though the District wants Mr. Moorehead to return to work, it adamantly refuses to disclose whether it secretly acted as an arm of the FBI without informing Mr. Moorehead of his constitutional rights. Indeed, the District refuses to answer if Mr. Moorehead is currently under FBI investigation. How could any employee return in such a circumstance?

This is incredibly serious and the refusal of the District to provide this discovery, and the Hearing Officer's biased rulings preventing it from being disclosed, are simply shocking.

V. Conclusion

This board hearing and disciplinary process is objected to as illegitimate, biased, predetermined, pretextual, and primarily designed as a way to paper over and cover up the District and Board's illegal conduct toward Mr. Moorehead. The District and Board should drop the charade, clear Mr. Moorehead's name, and resolve this matter in a serious and ethical way.

Respectfully,



Francis Malofiy, Esquire
Alfred (AJ) Fluehr, Esquire

EXHIBIT 53

Thursday, February 24, 2022

The Board of Directors submits the following for discussion and action:

- A. Motion to approve an independent engagement agreement between the Allentown School District and School Investigation Services LLC commencing on February 24, 2022, as per **Exhibit A**.
- B. Approval of Settlement of Special Education Due Process Claim, 2.25.22 – 1 – per agreement.
- C. Approval of Settlement of Special Education Due Process Claim, 2.25.22 -2 – per agreement.
- D. Motion to modify the appointment of Jeffrey T. Sultanik Esq. of Fox Rothchild LLP as the board appointed hearing officer and to appoint Samuel A. Haaz, Esq. of Fox Rothchild LLP as an Alternate Hearing Officer with respect to the charges of dismissal filed by the Allentown School District relating to Employee 27958.

EXHIBIT 54



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July 29, 2022

Via Email, Regular and Certified Mail

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*Special Counsel to the Allentown School
District*

Re: Determination for Termination Hearings of Jason Moorehead

To Special Counsel for Allentown School District and for Mr. Moorehead,

Attached to this letter is the Determination made by the Hearing Officers Jeffrey T. Sultanik and Samuel A. Haaz in the above matter. The Allentown Board of School Directors voted to terminate Mr. Moorehead on July 28, 2022. This matter is now concluded. Should you have any questions, please contact my office.

Kind regards,

A handwritten signature in black ink, appearing to be 'S.A. Haaz'.

Samuel A. Haaz

Encl.

Cc: PSEA, Corrine Fecho and Charles L. Herring

A Pennsylvania Limited Liability Partnership

**ALLENTOWN SCHOOL DISTRICT
TERMINATION HEARING**

ALLENTOWN SCHOOL DISTRICT

V.

JASON MOOREHEAD

HEARING OFFICERS:

JEFFREY T. SULTANIK

SAMUEL A. HAAZ

DETERMINATION OF HEARING OFFICERS

Pursuant to Chapter XI of the Public-School Code of 1949, as amended, the Hearing Officer recommends to the ASD Board of School Directors that Jason Moorehead (“Moorehead”), a professional employee, be terminated for willful neglect of duties when he failed to report to his teaching assignment for the 2021-22 school year. Pursuant to Article XI of the School Code, the ASD Board of School Directors appointed hearing officers Jeffrey T. Sultanik and Samuel A. Haaz, both of the law office Fox Rothschild, LLP, to preside over Moorehead’s termination hearing. Pursuant to the appointment by the ASD Board of School Directors, and after a careful review of all the evidence presented, testimony received, and the briefing of the counsel for Moorehead and the ASD, the Hearing Officers conclude that Jason Moorehead did neglect his duties and should therefore be terminated based upon the following:

PROCEDURAL HISTORY

At the start of the 2020-21 school year, Jason Moorehead did not report to his teaching assignment as a middle school teacher for the ASD. Moorehead expressed to the ASD, both through his counsel and himself, that he did not intend to return to the ASD. By letter dated October 12, 2021 (“Notice of Hearing”), the ASD notified Moorehead that it would appoint a hearing officer and hold a hearing to determine whether Moorehead should be terminated. The Notice of Hearing stated the ASD’s intention to recommend to the Board of School Directors that

Moorehead be terminated for “willful neglect of duties.” The Notice of Hearing also notified Moorehead of his right to be represented by counsel, to appear and present evidence, and to challenge any evidence presented by the ASD.

The ASD Board of School Directors engaged Jeffrey T. Sultanik to act as the hearing officer in this matter.¹ On October 21, 2021, Hearing Officer Sultanik issued a Pre-hearing Memorandum that scheduled a pre-hearing video conference, explained the pre-hearing briefing requirements, and to provided counsel with the framework for the termination hearing. Counsel for Moorehead and the ASD provided the Hearing Officer with pre-hearing briefs and exhibit packets outlining their respective arguments and relevant evidence. A pre-hearing conference was held on November 14, 2021.

There were three live hearings in this matter with each hearing held in the Administrative Offices of the school district located at 31 South Penn St, Allentown, PA 18102. The hearings were open to the public and a stenographer recorded the testimony taken at each hearing. The first hearing occurred on November 22, 2021, the next on December 14, 2021, and the final hearing on March 16, 2022.² The hearing dates were all agreed upon by counsel for the ASD and Moorehead, and the Hearing Officers allowed the ASD and Moorehead to subpoena witnesses to testify at said hearings. At the hearings, the parties were afforded an opportunity to present evidence and cross-examine witnesses, thus creating a full and complete record.

¹ By resolution of the ASD Board of School Directors, attorney Samuel A. Haaz was formally appointed as co-hearing examiner during the February 24, 2022 Board meeting. The motion, which was approved provided “Motion to modify the appointment of Jeffrey T. Sultanik Esq. of Fox Rothchild LLP as the board appointed hearing officer and to appoint Samuel A. Haaz, Esq. of Fox Rothchild LLP as an Alternate Hearing Officer with respect to the charges of dismissal filed by the Allentown School District relating to Employee 27958.”

Once the testimony was completed, the Hearing Officer provided a briefing schedule to the parties, and allowed them to make closing arguments by written submission. On May 26, 2022, the ASD submitted its post-hearing brief to the Hearing Officers. On June 2, 2022, counsel for Moorehead submitted his post-hearing brief. With the benefit of a complete record, the Hearing Officers determined the following facts and conclusions of law.

FINDINGS OF FACT

1. Jason Moorehead is presently employed as a middle school social studies teacher within the Allentown School District, last assigned to the Raub Middle School.
2. It is undisputed that, on January 6, 2021, Jason Moorehead attended the “Save America Rally” in Washington D.C. at which Donald J. Trump and others spoke.³
3. It is undisputed that, on January 6, 2021, Jason Moorehead published to his social media account(s) images of himself in attendance at the rally in Washington, D.C.
4. On January 6, 2021 news agencies reported live video images of hundreds of Donald J. Trump supporters proceeded from the rally to the United States Capitol where they assault police officers, destroyed property, and forcibly entered the Capitol building.
5. As a result, members of the United States Senate and the House of Representatives who were in session to certify the results of the 2020 Presidential Election, barricaded themselves

³ It is a matter of public record that, during the rally, Donald J. Trump stated: “All of us here today do not want to see our election victory stolen by emboldened radical-left Democrats, which is what they're doing. And stolen by the fake news media. That's what they've done and what they're doing. We will never give up, we will never concede. It doesn't happen. You don't concede when there's theft involved. Our country has had enough. We will not take it anymore and that's what this is all about. And to use a favorite term that all of you people really came up with: We will stop the steal.” *See* npr.org (<https://www.npr.org/2021/02/10/966396848/read-trumps-jan-6-speech-a-key-part-of-impeachment-trial>) (last visited on June 27, 2022).

within and/or evacuated the Capitol building before later returning to certify Joe Biden as president elect.

6. On January 7, 2021, the Allentown School District was made aware the Mr. Moorehead had posted images of himself in Washington D.C. on January 6, 2021 attending the rally. *See* Moorehead_0003.

7. On January 7, 2021, Thomas Parker, Superintendent of Allentown School District, issued a statement addressed to Allentown families, ASD staff, and the Allentown community. *See id.*

8. The statement provided that the ASD was made aware that an unnamed staff member “was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.” *See id.*

9. The statement further provided that the unnamed staff member was temporarily relieved of his duties until the ASD conducted a formal investigation to determine his involvement in the events of January 6, 2021. *See id.*

10. The statement further advised other staff members to “think carefully about what they share online and how it could affect their students and fellow community members.” *See id.*

11. In accordance with the January 7, 2021 letter, the ASD temporarily relieved Mr. Moorehead of his teaching responsibilities, while providing him full pay and benefits, so that it could conduct an investigation to determine whether he had violated any school policies. *See* Moorehead_0030.

12. By email on January 7, 2021, then Executive Director of Human Resources, Anthony Pidgeon, wrote to Moorehead and stated:

This will confirm my earlier direction to you that based upon certain social media posting that raise serious concerns about your involvement in the civil unrest that

occurred at the United States Capitol Building yesterday and the substantial disruption to that has already occurred by the public in reaction to those postings, you are hereby assigned to home with pay and benefits pending further investigation of your involvement. While your assignment to home remains you are relieved of your teaching duties and you are directed to have no contact with students, or staff members outside of union representation. In the meantime, if you have not already done so you are strongly advised to take down any posting you have placed on social media.

See id.

13. On January 21, 2021, counsel for Moorehead, Francis Malofiy, Esq., submitted a letter to the ASD and demanding that Moorehead be immediately reinstated and paid a sum of \$1,000,000.00. *See* Moorehead_0011.

14. On January 25, 2021, counsel for the ASD, John Freund, Esq., responded by stating that the ASD was within its rights, as well as its obligation, to investigate the conduct of one of its teachers who might be involved with conduct that could interfere with his role as an effective teacher and that, when the ASD's investigation was concluded, it would make a recommendation regarding his return to the classroom. *See* Moorehead_0018.

15. On January 26, 2021, Attorney Malofiy accused the ASD of uttering false and defamatory statements in its January 7, 2021 statement to the community. *See* Moorehead_0016.

16. On January 28, 2021, Attorney Malofiy sent another letter to counsel for ASD, stating, among other things, Moorehead's position that his "personal social media posts are all Constitutionally protected political expressions on matters of public concern." *See* Moorehead_0025-0027.

17. By email dated February 8, 2021, Attorney Freund provided Attorney Malofiy with the ASD's stated basis for assigning Moorehead to his home with pay on January 7, 2021. *See* Moorehead_0030.

18. By email dated March 31, 2021, Attorney Freund notified counsel for Moorehead that the ASD's investigation into Moorehead's actions on January 6, 2021 was complete. *See* Moorehead_0034.

19. By letter dated April 1, 2021, Attorney Malofiy again accused the ASD of making defamatory statements against Moorehead and raised his demand to \$5,000,000.00 and a "correction of the record." *See* Moorehead_0036.

20. By letter dated April 9, 2021, HR Director Pidgeon gave notice to Moorehead of a *Loudermill* hearing scheduled for April 15, 2021 at 3:00 p.m. at the ASD Administration Building and advised Moorehead that he could bring counsel of his choosing. *See* Moorehead_0038.

21. The stated issues to be addressed at the *Loudermill* hearing were (1) whether Moorehead's posting of photographs to his social media of himself on January 6, 2021 in Washington D.C. violated Local community Standards, (2) whether Moorehead violated the District's Acceptable Use Policy, (3) whether Moorehead violated School Board policy 419 regarding standards of off-campus conduct, and (4) whether Moorehead violated the personal-day leave policy. *See id.*

22. By email dated Tuesday, April 13, 2021, Attorney Malofiy responded to the ASD's notice of a *Loudermill* hearings. Mr. Malofiy stated: "Why are you [counsel for ASD] even attempting to proceed with a Loudermill hearing? I've already made it clear Jason [Moorehead] cannot return to Allentown because the District has made that an impossibility. No reasonable teacher could return given the District's conduct. The only thing that makes sense at this point is for the District to compensate him for the defamation and what they have put him through, and for Jason and the District to part ways." *See* Moorehead_0041.

23. The *Loudermill* hearing did not proceed on April 15, 2021, as Attorney Malofiy had a scheduling conflict. *See id.*

24. By email dated May 4, 2021, Attorney Malofiy wrote to Attorney Freund and stated that “[t]here will not be a *Loudermill* hearing unless the defamation is corrected...”. *See Moorehead_0047.*

25. Attorney Malofiy also stated, “Lets be clear: Mr. Moorehead cannot go back to ASD. The District’s actions and inaction have made this impossible.” *See id.*

26. At the conclusion of the 2020-21 school year, Moorehead remained assigned to his home, with his teaching duties suspended, while receiving full pay and benefits.

27. By letter dated July 16, 2021, HR Director Pidgeon notified Moorehead that the ASD concluded its investigation into his activities on January 6, 2021. The ASD concluded that Moorehead had not violated Board policy 419, but did violate the ASD’s Acceptable Use Policy for using district electronics for non-school purposes. *See Moorehead_52.*

28. The July 16, 2021 letter stated that Moorehead was returned to a teaching assignment and that ASD Human Resources would provide further information regarding Moorehead’s teaching location for the 2021-22 school year. *See Moorehead_53.*

29. The July 16, 2021 letter further advised that Moorehead must undergo training in cultural competencies related to African American and Hispanic United States History and requested that Moorehead confirm his receipt of the letter. *See id.; see also* ASD Ex. “G”.

30. By letter dated July 30, 2021, Attorney Malofiy notified Attorney Freund that Moorehead rejected the ASD’s proposal and that Moorehead refused to attend diversity training classes. *See Moorehead_0055; see also* ASD Ex. “F”.

31. By certified letter dated August 9, 2021, HR Director Pidgeon wrote to Moorehead and stated:

I have not heard from you following my letter of July 16, 2021, in which I asked you get back to me by July 30, 2021. Because the start of school is only weeks away, we must know whether you will return to teaching for the upcoming year. It is therefore essential that we hear from you definitively on whether or not you intend to return to teaching in the Allentown School District no later than the end of business on Friday, August 13, 2021. If you do not intend to return, your salary and benefits will be dismissed. If I do not hear from you by August 13, 2021, it will be assumed you do not intend to return, and your salary and benefits will be discontinued pending formal termination of your employment.

See ASD Ex. “E”.

32. Neither Moorehead nor his counsel responded by the August 13, 2021 deadline.

33. By email dated August 16, 2021, Moorehead wrote to HR Director Pidgeon and stated that “there is no way that I can return to the Allentown School District given the way the District has publicly vilified and defamed me, poisoned the community against me, put me and my family’s safety in jeopardy, and never corrected the record.” *See* ASD Ex. “D”.

34. Moorehead alleged, by exhibit, that he stopped receiving pay from the ASD on September 1, 2021. *See* Moorehead_0061.

35. On September 13, 2021, HR Director Pidgeon wrote to Moorehead to document that Moorehead had not attended the in-service days in August and/or September of 2021 in final preparation for the start of the school year, and that Moorehead was not present when students returned to the classroom in early September 2021. *See* ASD Ex. “A”.

36. Pidgeon stated to Moorehead that “you leave me no choice but to believe that you do not intend to return to work although you have not resigned. Essentially, this means that you failed to call to report your absence and you failed to report to work for seven consecutive workdays.” *See id.*

37. Finally, Pidgeon notified Moorehead that a *Loudermill* hearing would commence on September 17, 2021 at 2:00 p.m. at the ASD Administration Center and that such a hearing would provide Moorehead an opportunity to provide any additional information for ASD's consideration before any recommendation was made to the ASD Board of School Directors regarding Moorehead's employment. *See id.*

38. The *Loudermill* hearing was rescheduled to September 22, 2021. *See* ASD Ex. "B".

39. The *Loudermill* hearing proceeded on September 22, 2021 *via* Zoom with Moorehead in attendance, along with his counsels Attorney Malofiy and A.J. Fluehr. *See* Notes of Testimony from the *Loudermill* Hearing, ASD Ex. "G".

40. By letter dated October 12, 2021, the ASD issued a statement of charges notifying Moorehead of its intention to hold a hearing to determine whether Moorehead should be dismissed from his employment as a professional employee for willful neglect of his duties.

41. Under the Collective Bargaining Agreement, Section 1133, Moorehead could have elected the remedy of a hearing in front of a neutral and impartial arbitrator.

42. Moorehead did not elect to proceed by way of arbitration.

43. Moorehead instead chose to proceed by a hearing under Section 1129 of the School Code.

44. The first hearing in this matter to determine whether or not to recommend the ASD Board of Directors terminate Moorehead commenced on November 22, 2021 ("Hearing No. 1").

45. Hearing No. 1 was a public hearing which took place at the ASD Administrative Building from approximately 11:15 a.m. to 4:55 p.m.

46. The ASD, represented by Attorneys Freund and Taylor, called their first and only witness, former ASD HR Director, Anthony Pidgeon. *See* Hearing No. 1, 66:9.

47. Pidgeon testified that he had worked as the HR Director for ASD for 3.5 years. *Id.*, 66:24.

48. Pidgeon confirmed that he corresponded with Moorehead by letter in July 2021 and provided a deadline of August 13, 2021 for Moorehead to confirm his intention to teach for the ASD in the fall of 2021. *Id.*, 73:1-5.

49. Pidgeon confirmed that the District needed to make staffing decisions in early August, that Moorehead never stated an intention to return to work, and in fact stated he planned on not returning to work. *Id.*, 73:1 – 74:2.

50. Pidgeon explained that, because Moorehead did not have an official assignment in the ASD computer system, he was not awarded pay from the start of the 2021 school year until the *Loudermill* hearing when that issue was raised by Moorehead’s attorney, at which point pay was reinstated. *Id.*, 80:21-25.

51. Pidgeon testified that, it was ASD policy to recommend their termination for employees that fails to return to work. *Id.*, 82:5.

52. On cross examination, Pidgeon testified that his role in the investigation of Moorehead’s involvement in the events of January 6, 2021 was “very limited”. *Id.*, 87:3.

53. Pidgeon testified that the extent of his involvement was: (1) an initial conversation with Moorehead about his being present in Washington D.C. on January 6, 2021; (2) the reason Moorehead gave for being absent from school that day; and (3) the reacquiring of Moorehead’s district-issued electronics. *Id.*, 87:3-11.

54. Pidgeon testified that Moorehead told him that he was not near the Capitol on January 6, 2021. *Id.*, 114:7-8.

55. Pidgeon testified that, to his knowledge, Moorehead did not violate any School Board Policy regarding his attendance at a rally in Washington D.C. on January 6, 2021. *Id.*, 148:9.

56. At the conclusion of the November 22, 2021 hearing, the ASD rested its case against Moorehead and entered its exhibits into evidence.

57. The next hearing was scheduled for December 14, 2021 (“Hearing No. 2”) at the ASD Administration Building. *See* Transcript Hearing No. 2.

58. Attorney Malofiy called Dr. Marilyn Martinez as a witness. *Id.*, 19:12.

59. Dr. Martinez testified that she was employed by the ASD as the interim Superintendent from approximately April 2021 to the end of July, 2021. *Id.*, 24:18-25:2.

60. Dr. Martinez testified that although her subpoena commanded that she bring “all records and information related to Jason Moorehead,” she had no such records in her possession as she was no longer employed by the ASD. *Id.*, 23:5-16.

61. Dr. Martinez did not recall whether the FBI was conducting an investigation into Moorehead related to his activities on January 6, 2021. *Id.*, 30;5-6; 37:19.

62. Dr. Martinez testified that there was not an announcement to the community-at-large that Moorehead did not violate a School Board Policy because personnel matters are not discussed in public. *Id.*, 57:10.

63. When asked what the District did to address community outrage directed towards Mr. Moorehead, Dr. Martinez testified that she did not believe the ASD did anything directly to address that. *Id.*, 96:1.

64. Dr. Martinez became aware that Moorehead alleged receiving death threats. *Id.*, 97:1.

65. There was no allegation that any of the alleged threats were made by any ASD employee. *Id.* at 98:14-19.

66. The District did not do anything to address Moorehead's allegation of receiving such threats. *Id.*, 98:10.

67. Dr. Martinez was contacted by the FBI in early January, 2021 about Moorehead's attendance at the January 6, 2021 rally in Washington D.C. *Id.*, 101:9-18.

68. Dr. Martinez relayed to the FBI that she did not possess any information about Moorehead's actions on January 6, and directed the FBI to the lead investigator, Attorney Freund. *Id.*, 109:4-5.

69. Hearing No. 2 concluded at 2:58 p.m. with Dr. Martinez as the only witness to testify at the hearing. *Id.*, 136.

70. At the Board meeting on February 24, 2022, the board formally appointed attorney Samuel A. Haaz of Fox Rothschild, LLP an Alternate hearing Officer for the termination hearing for Moorehead, Employee 27958.

71. On March 16, 2022, the third and final hearing ("Hearing No. 3") was held at the ASD Administration Building and commenced at approximately 12:00 p.m.

72. Counsel for Moorehead called Mark Leibold, PSEA Union President, to testify and counsel for ASD objected. *See* Transcript of Hearing No. 3, 4:10-24.

73. In response to counsel for ASD's request for an offer of proof for Mark Leibold's testimony, counsel for Moorehead argued that "Mr. Leibold should be questioned to establish that the grievance process could not be followed, that there was no choice on Mr. Moorehead's part." *Id.*, 17:12-16.

74. Counsel for Moorehead argued Moorehead could not follow the grievance process because there was “no way he c[ould] go back [] because [the ASD] betrayed him.” *Id.*, 15:18-19.

75. After hearing the arguments of counsel, Hearing Examiner Sultanik excused Mr. Leibold without hearing his testifying. *Id.*, 24:20-21.

76. Counsel for Moorehead submitted exhibits into evidence and rested. *Id.*, 29.

77. Moorehead could have testified, but chose not to.

78. The Hearing Officer did not make any negative inference against Moorehead for his decision not to testify.

CONCLUSIONS OF LAW

79. Moorehead is a “professional employee” as defined under the Pennsylvania School Code. *See* 24 P.S. §11-1101

80. The termination of a professional employee is governed by the Pennsylvania School Code, 24 P.S. §11-1122.

81. Section 11-1122 School Code provide that a “valid cases for termination of a contract heretofore or hereafter entered into with a professional employee shall be...willful neglect of duties...” *See id.*

82. The sole issue before this Hearing Officer was whether the Allentown School District had a legal and factual basis for terminating a teacher who repeatedly stated his intention to not report to his assigned teaching duties then failed to report for the start of the 2021-22 school year.

83. The Hearing Officer finds that there is both a legal and factual basis for the Allentown School District’s termination of Mr. Moorehead based upon his willful neglect of duties.

84. In *Bd. of Sch. Directors of Fox Chapel Area Sch. Dist. v. Rossetti*, the Pennsylvania Supreme Court held that a professional employee's failure to return to work without any legal justification was proper cause for dismissal by the Board of School Directors. See 488 Pa. 125, 131, (1979).

85. In *Rossetti*, a fifth-grade teacher took maternity leave and was granted an additional four-week discretionary leave by the school board after her maternity leave expired. *Id.*, at 127.

86. A week prior to her return date of January 13, the teacher requested an additional leave of absence for the remainder of the school year to care for her newborn, which the board denied. *Id.*, at 128.

87. When the teacher refused to resume her teaching responsibilities and failed to appear for work, she was terminated by the board of directors. See *id.*

88. The Pennsylvania Supreme Court affirmed the termination, reasoning that "choosing between the health-care needs of one's child and keeping one's job may be a difficult choice, appellee did choose to remain at home." *Id.*, at 131 n. 8.

89. Similarly, the Pennsylvania Commonwealth Court affirmed the termination of a teacher who failed to report for the beginning of the school year when, due to a health condition, she sought treatment from a specialist in Arizona. *Kearns v. Lower Merion Sch. Dist.*, 21 Pa. Cmwlth. 476, 482 (1975). ("Ms. Kearns' failure to report, though perhaps involuntary because of her physical problems, amounted to an abandonment of her contract.")

90. The case law is clear that school districts can discharge tenured employees for the commission of a single act that constitutes a neglect of duties, as long as that singular failure to perform a duty is "willful." See *Williams v. Joint Operating Committee of Clearfield County*

Vocational Technical School, 824 A.2d 1233, 1236, 177 Ed. Law Rep. 1162 (Pa. Commw. Ct. 2003).

91. In *Williams*, the court described what is necessary to make out a charge of “willful neglect of duties” as follows:

The charge of willful neglect of duties as a valid cause for termination of a professional employee’s contract was added by the 1996 amendment to Section 1122 of the Code. While there is a dearth of appellate case law interpreting this violation, the nature of this conduct is easily understood....a willful neglect of duties by a professional employee may also be defined as an intentional disregard of duties by that employee. We note that there is no requirement of a continuous course of conduct in this charge as there is in the charge of persistent and willful violation of school laws.

See id., at 1236.

92. A professional employee’s willful neglect of their duty is not limited to situations where they fail to report to work, but is applied in situations where an employee fails to meet the duties of their job. *See Cutler v. Bellefonte Area School Dist.*, 105 A.3d 856 (Pa. Commw. Ct. 2014) (a principal’s failure to complete teacher observations as assigned constituted neglect of duties); *Haninchick v. Lebanon School District*, TTA 3-17, 56 SLIE 20 (2020) (Secretary concluded that repeatedly missing grading deadlines and improper grading practices constituted willful neglect of duties); *Moskowitz v. Central Bucks School District*, TTA 1-2020, 57 SLIE 21 (2020) (the Secretary of Education ruled that the supervisory employee was properly discharge for willful neglect of duty in failing to ensure that IEP’s were legally compliant).

93. Based upon the facts presented during the termination hearing through testimony and documents presented by both the Allentown School District and from Moorehead himself, there can be no doubt that Moorehead neglected his teaching duties.

94. Moorehead, through his counsel, repeatedly asserted his intention to no longer teach at the ASD as early as April of 2021. *See Moorehead_41* (April 13, 2021 letter stating “I’ve

already made it clear Jason [Moorehead] cannot return to Allentown because the District has made that an impossibility.”); Moorehead_47 (May 3, 2021 letter stating “Lets be clear: Mr. Moorehead cannot go back to ASD. The District’s actions and inaction have made this impossible.”).

95. On July 16, 2021, HR Director Pidgeon notified Moorehead that the ASD concluded its investigation into his activities on January 6, 2021 and that Moorehead was to return to a teaching assignment in the 2021-22 school year after completing a training in response to his violation of the District’s Acceptable Use Policy. *See* Moorehead_52.

96. The July 16, 2021 letter requested Moorehead state his intention by July 30, 2021 as to whether he planned to teach for the ASD in the upcoming year. *See id.*

97. However, by letter dated July 30, 2021, Attorney Malofiy notified Attorney Freund that Moorehead refused to attend diversity training classes and would not return to the ASD. *See* Moorehead_0055; *see also* ASD Ex. “F”.

98. By email dated August 16, 2021, Moorehead wrote directly to HR Director Pidgeon and stated that “there is no way that I can return to the Allentown School District given the way the District has publicly vilified and defamed me...” *See* ASD Ex. “D”.

99. Moorehead failed to appear for in-service days in August and/or September of 2021 in final preparation for the start of the school year, and was not present when students returned to the classroom in early September 2021. *See* ASD Ex. “A”.

100. There is no question that Moorehead neglected his teaching duties and said neglect was willful.

101. Moorehead’s defense to the ASD’s charge of willful neglect, as stated in Moorehead’s closing argument brief, is that “there was no way he could return to ASD given the

hostile and dangerous environment the District and Board had created.” Moorehead Closing Brief p. 2.

102. Moorehead’s allegations that returning to that ASD would be an “unacceptable risk to his safety” ring hollow.

103. Moorehead could have presented evidence, through his testimony or otherwise, supporting his belief that returning to a teaching assignment at ASD would have posed a risk to his safety, but he declined to do so.

104. Further, the only evidence offered by Mr. Moorehead that his safety was ever threatened, was his assertion that, at some unknown time between January 7, 2021 and his August 16, 2021 letter, he received “death threats and other threatening phone calls.” *See* Moorehead_58.

105. While Moorehead asserts in the letter that he filed police reports, no such reports were ever entered into evidence and the record does not support Moorehead’s speculative and unsupported belief that teaching middle-school social studies for the ASD posed any risk to his safety—particularly nine-months removed from the alleged offending incident of his attending the rally in Washington D.C. on January 6, 2021.

106. Further, the ASD did not mandate that Moorehead would teach at Raub Middle School, his prior teaching assignment, and had not yet determined his teaching location. *See* Moorehead_0053 (“You will be contacted by Human Resources with further information regarding your teaching location prior to the start of the school year.”).

107. Therefore, the evidence does not support that Moorhead’s safety was at risk had he taught in the 2021-22 school year when his teaching location and assignment for that school year had not yet been decided.

108. Despite holding three hearings where Moorehead's counsel had the opportunity to present evidence that Moorehead's safety was in any way jeopardized by simply reporting for duty at the ASD during the 2021-22 school year, Moorehead's counsel presented no testimony or documentary evidence to support his argument.

109. Instead of trying to establish a case of Moorehead fearing returning to work, Moorehead's counsel chose to focus his questions on issues that were not before the Hearing Officer: like whether the January 7, 2021 statement by Superintendent Parker was defamatory; or whether the Federal Bureau of Investigation contacted the ASD regarding Moorehead's actions on January 6; or the extent to which the ASD complied with that investigation.

110. Despite Moorehead's counsel's impassioned arguments, he did not produce evidence that the Superintendent's January 7, 2021 statement, and not Moorehead's own social media publications of his attendance at the January 6, 2021 rally, caused any animosity from the ASD community directed towards Moorehead.

111. Moorehead attached what purport to be transcriptions from the February 11, 2021 ASD Board Meeting where Moorehead's attendance at the January 6, 2021 rally was discussed. See Moorehead's Exhibits p. 74-82 (which are not Bates labelled).

112. For example, Christine Condon purportedly stated that "Jason *proudly displayed on Facebook* his presence as the insurrection"; Rodney Bushe purportedly alleged that Moorehead was "*flaunting for the public to see*" him at the January 6, 2021 rally; and Moorehead does not contest that he published multiple images of himself in Washington D.C. on January 6, 2021.

113. Indeed, it was Moorehead's own online publication of his presence in Washington, D.C. on January 6, 2021 that alerted the ASD to his presence at the rally.

114. The January 7, 2021 letter from the Superintendent did not name Moorehead, nor did it state that he engaged in a riot, or any unlawful activity.

115. The letter merely stated that an ASD staff member had posted images of himself demonstrating he was “involved in the electoral college protest...on January 6, 2021” and was temporarily relieved of teaching duties pending an investigation.

116. Moorehead received full pay during the investigation and, when the investigation was completed, Moorehead was invited to return to the ASD and resume his teaching duties.

117. Moorehead willfully and voluntarily chose not to do so.

118. Moorehead also objects to the Hearing Officer’s ability to impartially consider the evidence presented without bias, as required by the School Code. *See* 24 Pa. Stat. Ann. § 11-1129 (requiring the school board “full, impartial and unbiased consideration” of the evidence and testimony.)

119. Had Moorehead possessed any doubts as to the Board’s ability to select an impartial Hearing Officer or Officers, Moorehead could have elected to arbitrate this matter under Section 1133 of the Collective Bargaining Agreement.

120. Nonetheless, Moorehead chose to proceed by hearing under the School Code.

121. The Hearing Officer permitted Moorehead nearly unfettered discretion to subpoena witnesses, and to develop his theory of the case through lengthy and repetitive cross examinations.

122. The Hearing Officer allowed for two days of scheduled hearings for Mr. Moorehead to call witnesses to further his defense.

123. Further, the Hearing Officer had no prior interactions with Mr. Moorehead, did not know him personally, and was generally with the details of this case.

124. As with Morehead's other claims, his allegations of Hearing Officer bias are not based upon facts or evidence, but on self-serving speculation and conjecture. *See e.g.* Moorehead Closing Argument Brief at p. 9, ("the District had acted as a secret arm of the FBI".)

125. Ultimately, when all the noise is put aside, the facts of this case are simple.

126. The ASD invited Moorehead to return to work, he stated his intention to not work for the ASD in the future, then failed to show up to work.

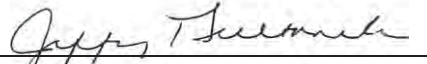
127. Moorehead left the ASD no choice but to terminate him when he refused to return to work.

128. The ASD's decision to terminate Moorehead based upon his willful neglect of duties is both legally and factually supported.

RECOMMENDATION

Based on the foregoing Decision, the Hearing Officer recommends the Board of School Directors issue an order implementing these findings of fact and conclusions of law that Jason Moorehead has willfully neglected his teaching duties by refusing to return to work justifying his termination from the Allentown School District.

FOX ROTHSCHILD LLP

By: 
Jeffrey T. Sultanik, Esquire
Hearing Officer

By: 
Samuel A. Haaz, Esquire
Alternate Hearing Officer

DATED: July 7, 2022

EXHIBIT 55



Francis D. Raub Middle School

@asdraub · School

Contact Us

allentownsd.org

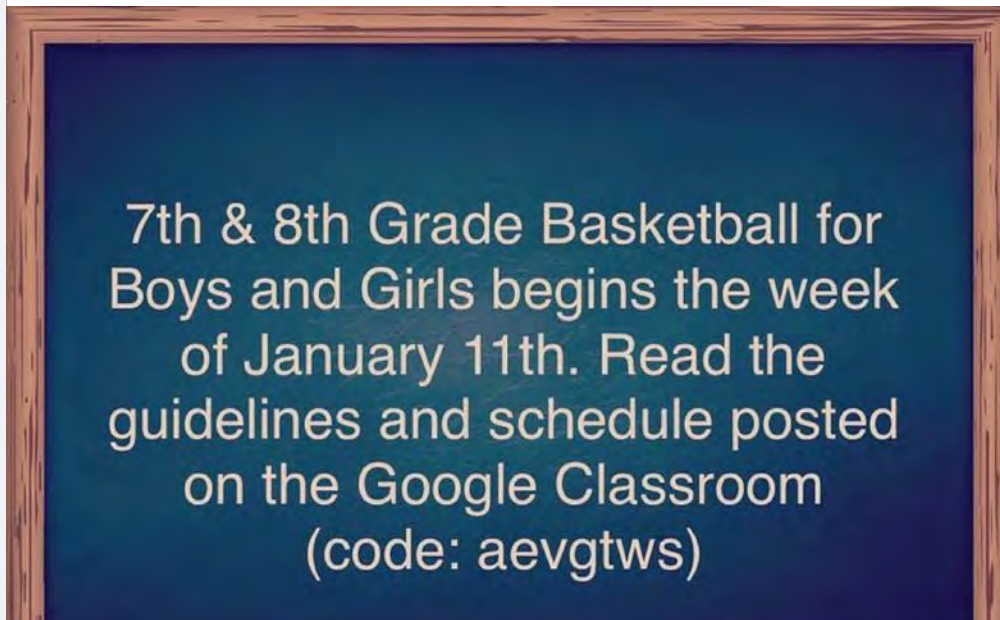
Home About Photos Events More

Like



Francis D. Raub Middle School

January 5 at 5:46 PM ·





10 Comments 2 Shares



All Comments



Write a comment...



Deidre Lutes

Your teacher, Jason Moorehead, participated in the riot and attack on our nation's Capitol yesterday and bragged about it on FB. He should not be teaching children.



Like · Reply · 1w



Clary Peralta Colón

Please take care of your Jason Moorehead situation this is unacceptable!



Like · Reply · 1w



Laura Kate

Clary Peralta Colón was just coming here to see if they addressed it. Sadly they did not.



Like · Reply · 1w



Candace Joseph

Laura Kate I messaged them with the pic - I've heard nothing.



Like · Reply · 1w



Nicholas Shackelford

Candace Joseph the superintendent of schools is Thomas Parker

31 S. Penn Street

Allentown, PA 18102

Phone#484-765-4000

If anyone wishes to contact him



Like · Reply · 1w · Edited






Nicholas Shackelford


Candace Joseph this is the reply I received from them.

Thank you for reaching out regarding this matter.


The Allentown School District is conducting a formal investigation into the events that transpired on January 6, 2021. Because of the emotion and controversy stirred by the events of January 6, 2021, the teacher has been temporarily relieved of his teaching duties until the School District can complete a formal investigation of his involvement. Please understand that this is a personnel matter, and the district cannot provide additional details of an ongoing investigation.

A full statement from Superintendent Parker has been shared with our families, staff and is available on our website: <https://bit.ly/3s73jHO>





ALLENTOWNSD.ORG
Superintendent's Message: Staff Involvement in January 6 Protests

 1

Like · Reply · 1w



Candace Joseph
Nicholas Shackelford thanks



Like · Reply · 1w



Nicholas Shackelford
Candace Joseph you're welcome

Like · Reply · 1w





Nicholas Shackelford

This is the statement from The School Superintendent.

January 7, 2021

Dear Allentown Families, Staff & Community:

On January 7, 2021, the Allentown School District (ASD) was made aware of a staff member who was involved in the electoral college protest that took place at the United States Capitol Building on January 6, 2021.

We understand that many members of our community are upset by the image. At the same time, the district has an obligation to respect the First Amendment rights of our staff and students.

Because of the emotion and controversy stirred by the events of January 6, 2021, the teacher has been temporarily relieved of his teaching duties until the School District can complete a formal investigation of his involvement.

The chaos that took place in the nation's capital yesterday was deeply troubling and acknowledge that these actions have caused immense pain in our community. It occurred at a time when we are already grappling with the impacts of a global pandemic that has affected the health and livelihood of families throughout our community. Yesterday's events have added to the confusion and uncertainty our students are experiencing during this unprecedented time.

To that end, we are reminding our staff to think carefully about what they share online and how it could affect their students and fellow community members. While we all have the right to express ourselves, it is important to do so respectfully. We ask the same of our students and families.

We will continue to work to address the academic, social, and emotional needs of our students during this challenging time. Thank you for your support in creating a safe, equitable, and inclusive environment for students to raise questions and develop a diversity of perspectives about our community, our nation, and the world in which we live.

Please know that our educators, counselors, and administrators are here to support your student. Contact your child's school or reach out to district staff using the Let's Talk feature of our website if you have additional concerns.

Sincerely,

Mr. Thomas Parker, Superintendent





Write a reply...



Jen Ahm

What do you plan to do about Jason Moorehead?

Like · Reply · 1w



Write a comment...

OTHER POSTS

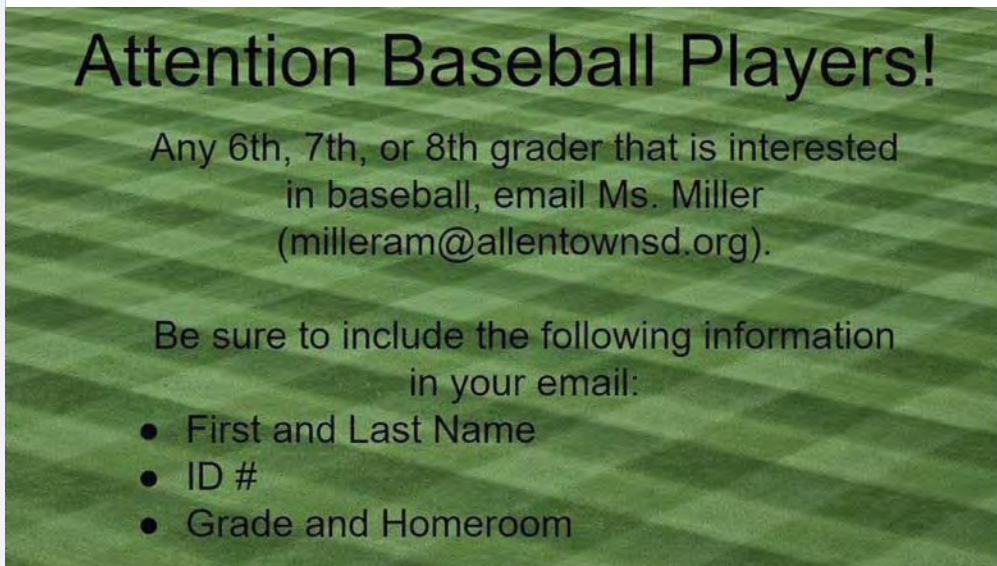


Francis D. Raub Middle School

18h · 🌐



Attention Baseball Players!



Francis D. Raub Middle School

22h · 🌐



ASD families - the Q4 Planning Survey is available in English & Spanish on the ASD website. Click here to fill out today for every child in your household!

<https://bit.ly/2XKPilq>



EXHIBIT 56



Jason Moorehead

5h · 🌐

Doing my civic duty!



"womandates."

👤 2

👍 Like

💬 Comment

🔄 Share



Jason Moorehead is with Todd Andrew.

2h · 🌐

Waiting for a hot dog during (what hopefully CNN will call) a 'mostly peaceful protest' while at the Capital!



👤 14

17 Comments 1 Share

👍 Like

💬 Comment

🔄 Share



Jason Moorehead

6h · 🌐

Doing my civic duty!





Jason Moorehead

Just now · 🌐



This!



Vintage Political Memes

14m · 🌐



(DVE)



The Brown Haired Libertarian

@think_liberty



Don't worry everyone the capitol is insured

2:26 PM · 06 Jan 21 · [Twitter for Android](#)



Like



Comment



Share



Jason Moorehead

1m · 🌐



Wrong on so many levels, but hilarious none the less



Vintage Political Memes

49m · 🌐



What a day.
(DVE)

Protestor challenges Pelosi for speaker of house via trial by combat circa 2021





Vintage Political Memes

January 6 at 3:20 PM · 🌐

What a day.
(DVE)

Protestor challenges Pelosi for speaker of house via trial by combat circa 2021

