

UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT

NICOLE WILLIAMS,

Appeal No. 20813

Petitioner,

REPLY AFFIDAVIT

-against-

BOARD OF EDUCATION OF THE
POUGHKEEPSIE CITY SCHOOL DISTRICT,

Respondent.

From actions of the Board of Education violating
Petitioner’s statutory authority with respect to
the Board’s investigation of compliance with
graduation requirements.

COUNTY OF DUTCHESS)
) ss:
STATE OF NEW YORK)

Nicole Williams, residing in Dutchess County, New York, being duly sworn, deposes and says:

1. I submit this affidavit in response to the Respondents’ Verified Answer and in support of Petitioner’s Verified Reply.
2. Respondents allege that I “was given ample time to investigate the graduation issue but chose not to do so.” (Verified Answer ¶ 6). This allegation is absolutely false. I was not given *any* opportunity to investigate the graduation issue, and I never chose not to investigate. The facts as presented by the Respondents establish that, from the beginning, the Board intentionally excluded me from its graduation investigation and prohibited me from conducting my own investigation. Their argument misses the point entirely. The issue is not whether I had notice of irregularities in the 2013 cohort graduation at an early enough point in time to do an investigation.¹ The issue is that the Board

¹ I maintain, as stated in the Petition and supporting papers, that I did not have any reason to believe that there were irregularities and, now that concerns have been brought to my attention, I intend to be part of the process of investigation and remediation, if necessary.

was led to believe there may have been irregularities and chose to conduct an investigation without informing me. This is undisputed. Therefore, there can be no argument that I had “ample time” to investigate because the undisputed facts are that I was kept in the dark about the entire issue.

3. Graduation began as a routine agenda item at the September 6, 2017 board meeting. At a Board review meeting prior to the September 6th meeting, I met with the Board President and Vice President and Dr. Ten Dyke, Director of Data Analysis and Accountability, to create the agenda for the September 6th board meeting. At that board review meeting, Trustee Doreen Clifford said that she thought it would be “helpful” if Dr. Ten Dyke would explain the meaning of “cohort” and present graduation data at the September 6th meeting. There was no mention by anyone at the board review meeting of any concerns with the 2013 cohort graduation. Dr. Ten Dyke’s presentation was included on the September 6 agenda.

4. On September 6, 2017, Dr. Ten Dyke gave her presentation. She explained the meaning of “cohort” and presented graduation rate data for the 2013 cohort and historical data.² At the end of her presentation, Board President Watson told Dr. Ten Dyke that she had questions that she would forward to Dr. Ten Dyke and myself. Dr. Ten Dyke replied, “I’ll be glad to answer all your questions.” At that point, I asked Dr. Rappleyea to give an overview of the function of the Committee on Special Education, which he did. Dr. Ten Dyke then spoke for a few more minutes after Dr. Rappleyea. After Dr. Ten Dyke had finished, I said to the Board, “please don’t hesitate to send us the questions and we’ll make sure the board receives all the data and information requested.”³ No one at the September 6 meeting said that there were students who may have been graduated improperly or that an investigation was necessary to review compliance with graduation requirements. Dr. Ten Dyke never told me either before or after September 6, 2017 that she had concerns about graduation.

² See Exhibit 1 to Dr. Watson’s Affidavit in Opposition to Stay Application.

³ The quotes from the September 6 board meeting are verbatim, based on the audio recording of the meeting.

5. On September 12, 2017, Board President Watson sent a list of questions to Dr. Ten Dyke regarding her presentation, which was copied to me.⁴ I am now aware for the first time, based on my review of Dr. Watson's Affidavit in Opposition to Stay Application, sworn to on January 10, 2018, that before Dr. Ten Dyke responded to Dr. Watson's September 12 questions, she sent an email on September 14, 2017, through her personal email to Dr. Watson's personal email, without copying me, stating that she had concerns regarding whether 24 students were properly graduated. Dr. Ten Dyke wrote in that email that she "recommend[ed] independent review of these transcripts in order to determine if the students actually qualified for the Regents or Local diplomas they received."⁵ Dr. Ten Dyke never brought her concerns regarding those 24 students to me. According to Dr. Watson, on September 14, she held a conference call with Dr. Ten Dyke and District counsel to discuss Dr. Ten Dyke's concerns, again without including me.⁶ This is the essence of the instant Petition. It was the duty of the Board, Dr. Ten Dyke and the District's counsel to inform me from the outset that there were concerns and to involve me in the process of the investigation. Yet the decision was made to exclude me from the process and, therefore, there was a fatal procedural defect in the entire investigation.

6. On September 18 and 22, Dr. Ten Dyke responded to Dr. Watson's September 12 questions by providing written memoranda listing data files that were attached to her memoranda.⁷ Although Dr. Ten Dyke's memoranda were copied to me, they did not contain any analysis of the data or any conclusions or concerns. Most importantly, Dr. Ten Dyke's memoranda did not contain the same recommendation that she made in her secret personal email to Dr. Watson's personal email, i.e., that the transcripts of 24 students should be reviewed. It is therefore clear that all elements of the

⁴ See Exhibit 2 to Dr. Watson's Affidavit in Opposition to Stay Application.

⁵ See Exhibit 3 to Dr. Watson's Affidavit in Opposition to Stay Application.

⁶ See Dr. Watson's Affidavit in Opposition to Stay Application, ¶ 11.

⁷ See Exhibit 4 to Dr. Watson's Affidavit in Opposition to Stay Application.

exchange between Dr. Ten Dyke and Dr. Watson that included concerns or allegations of irregularities were intentionally kept secret from me.

7. On September 26, 2017, Dr. Watson sent an email, which appears to be from her personal email, to Special Counsel Aldinger, copied to Dr. Ten Dyke's personal email, without copying me, instructing Mr. Aldinger to contact Dr. Ten Dyke "regarding the graduation debacle."⁸ Neither Dr. Watson nor Dr. Ten Dyke ever told me that they believed that the 2013 cohort graduation was a "debacle." After Dr. Ten Dyke submitted her September 18 and 22 memoranda to the Board, I did not hear anything from the Board regarding any graduation concerns until I was ambushed with Special Counsel Aldinger's first report on November 15, 2017. It is also crystal clear that the reason these were kept a secret was to undermine me and my administration. I respectfully request that the Commissioner not allow this level of severe dysfunction and disregard for the best interests of the District to go uncorrected.

8. The Board President claims that she denied my request to conduct an investigation regarding the graduation issue because I "was implicated by Attorney Aldinger's 'preliminary' report...."⁹ However, Aldinger's first report did not issue until November 14, 2017.¹⁰ This does not explain the need for the clandestine activity by Dr. Ten Dyke and the Board in September, before any conclusions had been reached.

9. Prior to the graduation issue, Dr. Ten Dyke had brought other serious issues directly to my attention, which I addressed immediately, including scoring irregularities in the Living Environment Regents exam that was administered to Poughkeepsie Middle School students in June 2017. On Friday, June 16, 2017, at approximately 4:00 p.m., Dr. Ten Dyke called me to report that she had found scoring discrepancies on the exam answer sheets. I instructed Dr. Ten Dyke to

⁸ See Exhibit 5 to Dr. Watson's Affidavit in Opposition to Stay Application.

⁹ See Dr. Watson's Affidavit in Opposition to Stay Application, ¶ 20.

¹⁰ See Dr. Watson's Affidavit in Opposition to Stay Application, ¶ 16.

immediately send me her concerns in writing. At 4:27 p.m. that afternoon, Dr. Ten Dyke emailed me a written summary of her concerns and recommendations. Upon receipt of Dr. Ten Dyke's summary, I immediately reported her concerns to the district's counsel and the Board. I informed the Board that I was immediately working with our counsel to investigate the issue. I then instructed our counsel and Dr. Ten Dyke to meet me at the Middle School. By that time, Dr. Ten Dyke had started to drive home, but I directed her to turn back and meet me at the Middle School. On that late Friday afternoon, I went to the Middle School to meet with Dr. Ten Dyke, legal counsel, the Middle School principal, and the Middle School assistant principal who was in charge of overseeing the exam. In the early morning of Monday, June 19, 2017, I reported the scoring issue to the State Education Department, who appointed Dutchess BOCES Deputy Superintendent Cora Stempel to lead an investigation into the scoring irregularities. Ms. Stempel later told the Poughkeepsie Journal that the district "was cooperative from the start and administrators involved provided all requested materials. In the end, [Ms. Stempel] was confident that there was a clear commitment on the superintendent's part to implement the recommendations made in the report in order to ensure that the testing protocols were strengthened."¹¹

10. In the case of the Living Environment exam scoring issue, I addressed the issue without delay and transparently, having reported it immediately to counsel, the Board, and the State. Had Dr. Ten Dyke conveyed her graduation concerns directly to me, as she had done with the Living Environment exam, I would have treated those concerns no differently. I would have reported and investigated those concerns immediately and openly. Therefore, Dr. Watson's statement that I was implicated by Mr. Aldinger's initial report is either false or (more likely) true in the sense that, before the investigation even began, Dr. Watson had decided that she was going to use the allegations as a

¹¹ "Discrepancies' found on Poughkeepsie science Regents answer sheets," Poughkeepsie Journal, Sept. 8, 2017, <https://www.google.com/amp/s/amp.poughkeepsiejournal.com/amp/640708001>.

means of harming me, regardless of whether they were founded or not. In reading Mr. Aldinger's initial report,¹² the latter theory seems highly plausible, as it is transparently punitive and critical, lacking any semblance of objectivity or remedial intent.

11. I cannot speculate on why Dr. Ten Dyke and Dr. Watson were conducting school business involving student records from their personal email accounts. Nor do I know why Dr. Ten Dyke transmitted this information with the obvious intent to exclude and undermine me. However, I believe that Dr. Ten Dyke's actions may be related to the Board's decision on January 22, 2018, to promote her to the newly created position of Assistant Superintendent of Data Analysis and Accountability. **(Exhibit A)**. In addition to the new title, the Board granted Dr. Ten Dyke a \$25,000 increase in her salary. It is my belief that this monetary benefit may have been intended as a reward to Dr. Ten Dyke for her loyal service to the Board in clandestinely transmitting information aimed at undermining me.

12. This appeal also concerns the Respondents' violation of my right to access District legal counsel to assist me in investigating the graduation issue. Board President Watson somehow confuses this as my request "to utilize the District's general counsel as [my] own personal legal advisor."¹³ However, I was in no way requesting personal counsel, but was seeking legal advice for the district-related issues that the Board required me to respond to.

13. The superintendent's right to access district legal counsel is mandated by District Policy 2270 ("School Attorney"), which provides that "[t]he President of the Board, or the Superintendent of Schools or his/her designee, may contact the counsel on legal matters affecting the operation of the school district." The Policy provides that one of the School Attorney's duties is "to

¹² See Verified Petition, Exhibit C.

¹³ See Dr. Watson's Affidavit in Opposition to Stay Application, ¶ 20.

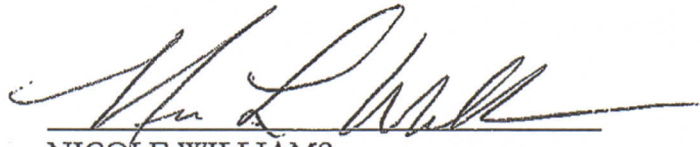
be easily accessible to the Board and the Superintendent of Schools ... with respect to legal matters issuing out of the day-to-day administration of the district.” **(Exhibit B)**.

14. However, in violation of District Policy, the Board continues to refuse my requests to obtain legal advice on district-related issues that clearly require input from legal counsel. Most recently, after a parent raised allegations that her daughter had not been provided appropriate academic intervention services (AIS), I responded to both the parent and a Board trustee, neither of whom were satisfied with my answer. The parent advised me that she had consulted with an attorney. Accordingly, I felt that it was necessary to obtain a legal opinion confirming that the district had complied with all appropriate standards in this matter. However, after I sent an email to district legal counsel to request his opinion, two Board members strenuously objected to my decision to seek legal advice.

15. The Board president stated that she found “it interesting and perhaps ineptness that this AIS program matter cannot be addressed by district leadership and needs district legal counsel to intervene.” **(Exhibit C)**. Another Board trustee stated:

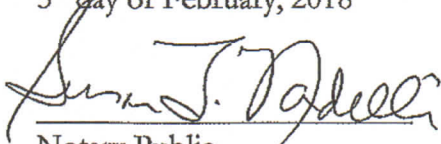
This is not something Counsel should be addressed to assist with. Clearly this is one of the reasons why the cost to the district is in the hundreds of thousands of dollars. This is not an issue where [district legal counsel] should be providing guidance.

(Exhibit D). When the Board president finally agreed that district legal counsel would be “reaching out,” I was again criticized for “inappropriately deflect[ing].” Thus, in this Board’s view, seeking legal advice on issues affecting the operation of the district is “inept,” “deflect[ing],” and should not be pursued because of the cost. By constantly refusing my requests for the assistance of the District’s legal counsel in dealing with District-related legal issues, the Board has made it impossible for me to properly perform my duties as superintendent.



NICOLE WILLIAMS

Sworn to before me this
5th day of February, 2018


Notary Public

SUSAN L. NARDELLI
Notary Public - State of New York
NO. 01NA6027653
Qualified in Dutchess County
My Commission Expires Jul 12, 2019



Poughkeepsie City Schools - Board of Education Agenda Item

Agenda Item Details

Meeting Jan 22, 2018 - Special Meeting

Category 3. Special Meeting

Subject B. Administrative Appointment - Resolution #18-0310

Type Action

Recommended Action WHEREAS, by Resolution #16-941, adopted on March 9, 2016, the Board Resolved that that Dr. Elizabeth Ten Dyke, who holds Permanent School District Administrator certification and Permanent Social Studies 7-12 certification be appointed on probation to the Director of Data Analysis and Accountability position (replacing Ms. Vijayalakshimi Giles who accepted another position in the District) in the Poughkeepsie City School District, in the Director of Data Analysis and Accountability administrative tenure area effective January 21, 2016 and extending through January 20, 2020, at an annual salary of \$110,000.00; and WHEREAS, the Board of Education has determined that Data Analysis and Accountability are of fundamental importance to the District and to ensuring that the District provides the high level of educational services required by State Law, Commissioner Regulations, and District Policy; and WHEREAS, the Board of Education has determined that it is appropriate to retitle the Director of Data Analysis and Accountability position as "Assistant Superintendent of Data Analysis and Accountability;" SO BE IT RESOLVED, that the Board hereby changes the title of the "Director of Data Analysis and Accountability" to "Assistant Superintendent for Director of Data Analysis and Accountability" and; BE IT FURTHER RESOLVED that Resolution #16-941, adopted on March 9, 2016, is amended to reflect this title change, effective January 23, 2018, and extending through January 20, 2020, at an annual salary of \$135,000.00; and BE IT FURTHER RESOLVED, that the Board hereby approves an Employment Contract by and between the District and Dr. Elizabeth Ten Dyke to serve as the Assistant Superintendent for Data Analysis and Accountability (A copy of which shall be incorporated by reference into the minutes of this meeting); and BE IT FURTHER RESOLVED, that the Board President is hereby authorized to sign such Agreement on the District's behalf.

[PCSD - contract with Dr. TD \(1\).pdf \(28 KB\)](#)

2270 SCHOOL ATTORNEY

The Board of Education shall retain legal counsel, who shall be appointed at the Annual Organizational Meeting of the Board of Education. The President of the Board, or the Superintendent of Schools or his/her designee, may contact the counsel on legal matters affecting the operation of the school district.

The Attorney must be admitted to the bar of New York State. The Attorney will be the legal advisor to the Board. In that capacity, the Attorney's duties will be:

1. to advise the Board with respect to all legal matters relating to the district, including, but not limited to, interpretation of the Education Law of the State of New York, and all other statutes, rules or regulations affecting the district;
2. to be easily accessible to the Board and the Superintendent of Schools (and, at the discretion of the Superintendent, to his/her administrative staff), with respect to legal matters issuing out of the day-to-day administration of the district;
3. to review and to represent the district in the preparation of contracts, as requested by the district (other than the contract for school attorney services);
4. to advise and assist in matters of litigation pursuant to the retainer agreement;
5. to review the legality of all policies or regulations to be adopted by the Board;
6. to review and advise with respect to any process served upon the district; and
7. to recommend the retainment of such special counsel as he or she may deem necessary in the circumstances, subject to the approval of the Board.

The selection of the School Attorney shall be carried out in accordance with state law and regulation, as well as Board policy.

Cross-ref:

[2210](#), Board Organizational Meeting

6741, Contracting for Professional Services

Adoption date: January 24, 2001

Revised date: _____, 2008

Poughkeepsie City School District