

UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT

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NICOLE WILLIAMS,

Appeal No.

Petitioner,

**NOTICE OF PETITION**

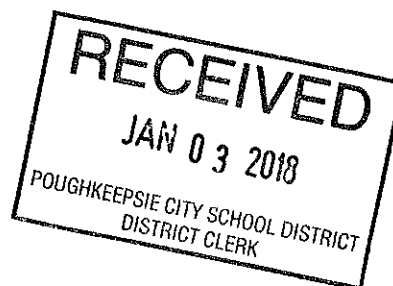
-against-

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.

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**NOTICE:**

**You are hereby required** to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available at [www.counsel.nysed.gov](http://www.counsel.nysed.gov) or from the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

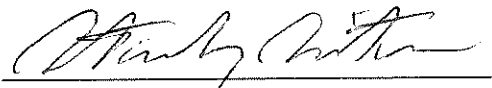
If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if the petitioner be represented by counsel, upon the counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

Please take further notice that the within petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three business days after service of the petition.

Dated: December 29, 2017

Yours, etc.



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To: Board of Education  
Poughkeepsie City School District  
11 College Avenue  
Poughkeepsie, NY 12603

UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT

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NICOLE WILLIAMS,

Appeal No.

Petitioner,

**VERIFIED PETITION**

-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.

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Petitioner, Dr. Nicole Williams, by her attorney, Stanley J. Silverstone, Esq., for her petition,  
respectfully alleges as follows:

**HISTORY/NATURE OF CURRENT APPEAL**

1. Petitioner, Dr. Nicole Williams, is the Superintendent of the Poughkeepsie City School District, and has been the victim of continuous attempts by the Board of Education to usurp and undermine her statutory authority as the chief executive officer of the school district to run the day-to-day operations of the district, to speak on all matters before the board, and "to enforce all provisions of law and all rules and regulations relating to the management of the schools." (Education Law § 2508).

2. One of the Board's previous unlawful actions, its July 14, 2017 moratorium on all teacher transfers in the district, resulted in Petitioner's filing of Appeal No. 20750 on September 28, 2017 (sustained in part on December 22, 2017).

3. Unfortunately, the Board's unlawful efforts to undermine the Petitioner have continued, necessitating another appeal to the Commissioner.

4. In early October of 2017, shortly after the filing of Appeal No. 20750, Respondent Board commenced a secret investigation into alleged graduation irregularities at the Poughkeepsie High School. The Petitioner was neither informed of the investigation nor interviewed as part of the investigation until after a twenty-seven page report of findings was presented to the Board by a Special Counsel retained by the Board on July 7, 2017 for purposes unrelated to alleged graduation irregularities. The Petitioner was then prohibited from conducting her own appropriate investigation into such allegations, and denied access to documents, witnesses, and District counsel. Respondent provided all of its investigation reports to the State Education Department – except for Petitioner’s report, which it intentionally excluded. Before completing the investigation, Respondent released the preliminary report of its Special Counsel to the news media, with the intent to publicly disparage, defame, and humiliate the Petitioner.

5. Petitioner seeks the Commissioner’s intervention to (i) declare that the Board violated Petitioner’s statutory authority by excluding her from the graduation investigation; (ii) remove Special Counsel Todd Aldinger from all investigation duties and powers; (iii) declare the November 14, November 15, and December 15 Aldinger reports null and void; (iv) declare that the Board violated Petitioner’s statutory authority by denying her access to counsel and directing her not to conduct her own investigation into the graduation of the 2013 cohort, declare said directive null and void and direct the Board to allow Petitioner access to District-approved counsel in conducting an investigation into the graduation of the 2013 cohort; and (v) assign the Department of Education with full oversight and direction of the graduation investigation.

6. It is by no means Petitioner’s desire to perpetuate an acrimonious relationship with the Board of Education or to strain the resources of the State Education Department. Dr. Williams wishes only to be given the opportunity to perform her duties without interference and molestation. However, it appears that, in order to do so, further intervention by the Department is necessary. Dr.

Williams begs the patience of the Commissioner in this process, asks for the Commissioner's assistance in addressing the specific issues of this appeal, and welcomes any other assistance that the Department can provide. And, although not the subject of this appeal, the Petitioner, as the leader of the District, wishes to make it very clear that she intends to fully investigate the graduation of the 2013 cohort and will work closely with the Department in every way possible in the process. If there were any irregularities in connection with the cohort, Petitioner will enforce any and all accountability and remediation measures as are necessary and appropriate. Petitioner asks only that she be given the proper opportunity to do so.

#### **REQUEST FOR A STAY**

7. Petitioner also seeks a stay of the Board's investigation pending a decision in this appeal. Petitioner submits that a stay is appropriate because Dr. Williams is likely to succeed on the merits of this appeal and she will be irreparably harmed in the absence of a stay. As shown in detail below, Petitioner is likely to succeed on her argument that the Board's actions with respect to the graduation investigation violate Petitioner's statutory rights under Education Law § 2508, and Board Policy 3120. Allowing the Board to continue its flawed investigation – which appears in every way to be retaliatory, considering the timing and the manner in which it is being conducted, and the Board's thirst for premature and unnecessary media publicity – will irreparably harm the Petitioner's and the District's reputations, unless a stay is ordered. Issuing a stay will not harm the Board, as the Petitioner only seeks a temporary stay until the Department can ensure that a fair and proper investigation is conducted in accordance with Petitioner's statutory authority.

## **PARTIES**

8. Petitioner, Nicole Williams, residing in Poughkeepsie, New York, County of Dutchess, is the Superintendent of the Poughkeepsie City School District (the “District”).

9. Respondent, Board of Education of the Poughkeepsie City School District (the “Board”), is a corporate body which governs the District pursuant to the Education Law of the State of New York.

## **STATEMENT OF FACTS**

### **The Board’s Unlawful Teacher Transfer Moratorium**

10. On June 15, 2017, pursuant to the Poughkeepsie Public School Teachers’ Association collective bargaining agreement, Petitioner gave tentative notice of assignment for the 2017-18 school year to all unit members. Among the many transfers throughout the District that Petitioner directed on June 15, 2017, was her decision to have two elementary school teachers, Shereen Cader and John Sammon, change places. Ms. Cader, a 5<sup>th</sup> grade teacher at Krieger Elementary School was directed to transfer to Warring Elementary School, and Mr. Sammon, a 4<sup>th</sup> grade teacher at Warring, was directed to transfer to Krieger. All of the teachers involved in the June 15<sup>th</sup> transfers – with the exception of Ms. Cader and Mr. Sammon – moved to their respective assignments. Ms. Cader and Mr. Sammon chose to ignore the transfer directive instead of complying with the order and using the contractual grievance process to challenge the transfers.

11. Unhappy with Petitioner’s June 15 transfer directives, on July 14, 2017, the Board adopted Resolution 18-0013, placing a preemptive moratorium on all teacher transfers in the District for the 2017-18 school year.

12. Petitioner advised the Board in several written and verbal communications that Resolution 18-0013 violated the New York Education Law and her authority as the Superintendent of Schools.

13. On August 28, 2017, Petitioner issued a series of directives transferring six teachers within the District.

14. On September 1, 2017, the Board issued letters to the teachers affected by the Petitioner's August 28 teacher transfer directives, instructing them that they were "hereby directed by the Board of Education to disregard" the Petitioner's August 28 directives.

15. On September 28, 2017, Petitioner filed an appeal to the Commissioner of Education pursuant to Section 310 of the Education Law in order to obtain an order declaring Resolution 18-0013 and the Board's September 1 directives null and void *ab initio*, and for other relief. On December 22, 2017, in Decision No. 17298, the Commissioner sustained the appeal by declaring the Board's teacher transfer moratorium unlawful, declaring that the Board's September 1 directives unlawfully interfered with the Petitioner's powers as Superintendent and Receiver, and ordered that the Petitioner's August 28 transfer directives are given full legal force and effect. A copy of the Decision is annexed hereto as **Exhibit A** for the convenience of the Department.

#### The Board's Secret Investigation

16. On July 7, 2017, pursuant to Board Resolution, the Board hired first-year attorney Todd Aldinger<sup>1</sup> as Special Counsel to the District "to perform internal investigations surrounding the 2016 and 2017 elections and any other alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate." (**Exhibit B**).

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<sup>1</sup> According to the records of the New York State Office of Court Administration, Mr. Aldinger was admitted to the New York Bar on January 11, 2017.

17. At some time subsequent to July 7, 2017, without the Petitioner's knowledge, the Board instructed Aldinger "to begin an inquiry into whether all students who graduated in 2017 were properly graduated." (**Exhibit C**, Aldinger Redacted Report, Nov. 15, 2017, at 2).

18. Aldinger began his investigation in "early October," i.e., very shortly after Petitioner filed her September 28, 2017 teacher transfer appeal. (Aldinger Redacted Report, Nov. 15, 2017, at 2).

19. Petitioner had no idea that any inquiry about graduation compliance was being conducted until November 12, 2017, when she reviewed Board Resolution #18-0236, which became publicly available on that day. (**Exhibit D**).

#### Special Counsel Prepares Two Reports Without Consulting with Petitioner

20. Aldinger's first preliminary report is dated November 14, 2017. The redacted version of this report, which the Board later provided to the news media, is dated November 15, 2017.

21. The November 14 report was prepared without discussing the concerns under investigation with Petitioner, or with the High School Principal or Assistant Principal. In fact, none of these three individuals were even aware that the investigation was taking place until after the November 14 report had been completed by Mr. Aldinger.

22. On November 15, 2017, the Board provided a copy of Aldinger's November 14 report to the Petitioner.

23. On November 15, 2017, the Board also adopted Resolution 18-0236, which authorized the Board President "to direct Special Counsel to communicate his current findings and any future findings that result from his ongoing investigation into improper or questionable graduations from the Poughkeepsie City School District to the appropriate Federal, State and County authorities, including, but not limited to: the New York State Department of Education, the Office of Civil Rights,



the Comptroller of New York, the Attorney General of New York, and the Dutchess County District Attorney.” **(Exhibit D)**. Petitioner was not able to attend the November 15 meeting due to illness.

Petitioner’s Response to Aldinger’s November 14 Report

24. On November 16, 2017, the Board directed Petitioner to respond to “each and every concern” raised in the 27-page Aldinger report by the close of business on November 21, 2017. **(Exhibit E)**. In other words, after the Board spent more than one month secretly investigating, Petitioner, the Superintendent of Schools, was given five days to respond. This alone speaks volumes about the true intent of the investigation, which was never was a truth-seeking mission, but rather a transparent and illegal attempt to justify a pre-ordained conclusion. Petitioner is the Superintendent of the District and was entitled by law to be alerted to the underlying concerns which were the subject of the investigation from the outset. Instead, she was presented with conclusory findings and given an unreasonably short time to prepare a “response” as if she were answering an accusatory document.

25. On November 18, 2017, Petitioner’s counsel advised the Board’s counsel that the Board’s November 16 directive was made in bad faith and was both improper and unreasonable, and stated that Petitioner needed additional information and a reasonable amount of time in order to respond. Petitioner’s counsel stated that “the fact that Dr. Williams was not involved in the investigation leads to the inescapable conclusion that the investigation was not a truth-finding mission at all, but a thinly-veiled attempt to entrap, harm, harass and humiliate her.” **(Exhibit F)**.

26. On November 22, 2017, Petitioner’s counsel followed up with a letter specifying the information that Petitioner would need in order to respond to the Aldinger report, including (i) all supporting documentation for each student, including, but not limited to, AIS assignments, tutoring, credit recovery assignments, and independent study assignments; (ii) all questions asked by Mr. Aldinger in his interviews; and (iii) all notes and transcripts from the interviews conducted by Mr.

Aldinger. **(Exhibit G)**. Further, Petitioner advised that “in order for Dr. Williams to properly respond to the report, she must conduct the investigation that she would have conducted had she been properly involved from the beginning.” As a result, Petitioner’s counsel stated that Dr. Williams required (a) full access to Mr. Aldinger, including, but not limited to, in-person meetings as necessary; and (b) the ability to interview the same witnesses, and other necessary witnesses, in the presence of Mr. Aldinger. Petitioner’s counsel also advised as follows:

As stated previously, Dr. Williams understands the importance of providing a response to the concerns investigated; however, her position as Superintendent is very different from all other employees in the District and she should have been involved in this process from the beginning. As Superintendent, she will conduct a proper investigation within a reasonable time after she has the information and resources outlined herein.

However, the Board refused to provide Petitioner with any of the information and resources that she requested.

27. In an email dated December 1, 2017, Board President Watson informed Petitioner that Dr. Elizabeth Ten Dyke, Director of Data Analysis and Accountability, Dr. Steven Rappleyea, Assistant Superintendent for Family and Student Support Services, and Ms. Phee Simpson, the High School Principal, had submitted responses to the Aldinger report of November 14, and that “[b]ased on their responses, the Board has sufficient cause to report these violations to the relevant authorities.” **(Exhibit H)**. Dr. Watson then threatened Petitioner that “[i]f you do not comply with the Board’s directive to provide [Aldinger] with a response by 4:00 p.m. on Monday, December 4, 2017 these reports will be filed and released.” Petitioner understood this to be a threat to file the Aldinger reports and responses with Federal, State and County authorities, including, but not limited to, the New York State Department of Education, the Office of Civil Rights, the Comptroller of New York, the Attorney General of New York, and the Dutchess County District Attorney, as provided in Board Resolution 18-0236.

28. On December 2, 2017, Petitioner again advised Board President Watson by email that “it is my duty as Superintendent of Schools to conduct an appropriate investigation regarding the allegations in the Aldinger report.” **(Exhibit I)**. Petitioner also advised Dr. Watson that “[a]s a matter of prudence and standard procedure, it is necessary for me to consult closely with our district counsel in order to analyze and response to this report.”

29. However, despite this and other requests, the Petitioner was denied access to District counsel with respect to the subject matter of the investigation and her response to Aldinger’s findings.

30. Under Dr. Watson’s threat of criminal prosecution, as provided in Board Resolution 18-0236, Petitioner provided the Respondent with her response to the Aldinger report on December 4, 2017. **(Exhibit J)**. Petitioner informed the Board in her response that she would “be doing a student-by-student inquiry into the graduation records in question and I will be doing so with the assistance of district counsel and access to all relevant witnesses and documents.” To that end, Petitioner requested in her December 4 memorandum that the Board direct District counsel to draft a summary of the legal issues discussed in the Aldinger report and have it delivered to Petitioner by no later than December 9, 2017 at 5:00 p.m. Petitioner also scheduled interviews with the High School Principal, Ms. Simpson, the Assistant Principal, Ms. Lovinsky (neither of whom were interviewed by Aldinger), and the Director of Instructional Support Services, Ms. Yvonne Palmer, for December 18. Petitioner stated that she required an attorney from the law firm representing the District to be present at all interviews to be conducted. Petitioner also requested the names of every person interviewed, copies of the notes from such interviews and every document reviewed by Mr. Aldinger and/or the Board in the course of this investigation to be delivered to her office by December 5.

31. On December 12, 2017, the Clerk of the Board hand-delivered the hard copy of an email dated December 7 from Dr. Watson to the Petitioner. **(Exhibit K)**. Petitioner did not receive Dr. Watson’s December 7 email until the Board Clerk delivered it to her on December 12. In the

December 7 email, Dr. Watson advised Petitioner that “[t]he Board of Education has provided any and all evidence to you and will not adhere to any other demands in your December 4, 2017 letter.” Dr. Watson also advised Petitioner that the Board declined Petitioner’s request for access to District counsel and advised Petitioner that “it is illogical for you as superintendent to have been brought in to lead this investigation” because “[t]his investigation directly implicates you by alleging egregious violations of law, regulation and district policy.” However, as Petitioner’s counsel pointed out in a letter to the Respondent’s counsel on December 13, 2017, the Board did not know, and could not have known, whether the investigation would “implicate” the Petitioner in any violations of law, regulation or district policy before the investigation began. **(Exhibit L)**. Therefore, involving the Superintendent at that time could not have been “illogical” *unless* the purpose of the investigation from the beginning was to implicate the Petitioner by any means possible.

32. As stated above, Special Counsel Aldinger prepared his November 14 report without discussing the concerns under investigation with Petitioner, or with the High School Principal or Assistant Principal. This fact was pointed out to Respondent’s counsel. In a self-conscious attempt to cure this egregious procedural flaw, Dr. Watson stated in her email dated December 7 that “Special Counsel Aldinger has always planned to interview you, Ms. Simpson, and Ms. Lovinsky at an appropriate time, after you had been given the opportunity to address his report in writing.” However, the Board has never explained why the twenty-seven page November 14 report was completed without Petitioner, Ms. Simpson or Ms. Lovinsky having been interviewed.

33. Dr. Watson’s email dated December 7 also directed Petitioner that “to avoid further delay, it appears to be necessary to schedule a recorded interview with Mr. Aldinger at this time.” The recorded interview of Petitioner was held on December 21, 2017. Aldinger admitted that he did not record any of his other interviews.

34. Throughout the time from when Petitioner first became aware of the investigation (November 12, 2017), Petitioner made it clear to the Board that she, as chief executive officer of the District was under a duty to conduct her own investigation of the graduation compliance issues for the 2013 cohort so that she could properly address any issues and implement any remediation that was necessary. As stated above, Petitioner requested assistance of counsel in that process. However, by email from Dr. Watson dated December 15, 2017, the Board directed Petitioner not to conduct any investigation into the graduation allegations. **(Exhibit M)**. Dr. Watson stated in her December 15 email her conclusion that Petitioner had “been egregiously implicated in the dereliction of your duties in [her] employment role as Superintendent of Schools.” Thus, the Board’s self-fulfilling prophecy had been completed and Petitioner’s opportunity to understand and address any graduation compliance issues was foreclosed by the Board.

35. In response, by letter dated December 16, Petitioner’s counsel asked Respondent’s counsel to “please explain how the Board reached its conclusion that Dr. Williams has been derelict in her duties before her interview with Mr. Aldinger on December 21<sup>st</sup>. What is the point of the December 21 interview if the Board has already reached its pre-determined conclusion?” **(Exhibit N)**. Petitioner’s counsel also advised the Respondent’s counsel that “since the Board is now prohibiting Dr. Williams from conducting an investigation pursuant to her statutory duties, she has postponed the meetings that she had scheduled with Ms. Simpson, Ms. Lovinsky, and Ms. Palmer for December 18.” Petitioner’s counsel received no response to this inquiry.

36. Special Counsel Aldinger prepared a second report, dated December 15, 2017, without discussing the concerns under investigation with Petitioner, or with the High School Principal or Assistant Principal.

#### Petitioner's Notice of Claim and Respondent's Retaliation

37. On December 5, 2017, Petitioner's counsel served a Notice of Claim on the District, containing Petitioner's claims against the Board and District for breach of her Employment Agreement, harassment, intentional infliction of emotional distress, interference with contract, and retaliation. **(Exhibit O)**. The Notice of Claim was received by Board President Watson and the District Clerk on December 11, 2017.

38. On December 19, 2017, despite the fact that a proper investigation had not been conducted or concluded, the Board sent a redacted version of the Aldinger report dated November 15, 2017 (the report was initially dated November 14, 2017) to a reporter with the Poughkeepsie Journal. The report was published on December 27, 2017, under an article entitled "Poughkeepsie students graduated under 'questionable circumstances,' investigator says."

39. In a letter dated December 20, 2017, to Mr. Roy F. Tario of the State Education Department, Petitioner stated that "[g]iven the multiple serious procedural flaws in the investigation, the only possible reason for the Board to want to see this publicized by the media is to defame, humiliate, and retaliate against me for enforcing my statutory and contractual rights by filing my appeal to the Commissioner and my Notice of Claim." **(Exhibit P)**.

#### Respondent's Failure to Share Information with NYSED

40. At the Special Counsel's interview of Petitioner on December 21, 2017, Mr. Aldinger advised Petitioner's counsel that that he provided the Education Department with his two reports dated November 14, 2017 and December 15, 2017, as well as the reports of the High School Principal, Phee Simpson, the Director of Data Analysis and Accountability, Dr. Elizabeth Ten Dyke, and the Assistant Superintendent for Family and Student Support Services, Dr. Steven Rappleyea. However, Special Counsel advised that he did not provide the Education Department with a copy of Dr.

Williams' report dated December 4, 2017, which was submitted by Dr. Williams to the Board in response to Mr. Aldinger's November 14 report. Petitioner's counsel sent Dr. William's December 4 report to Mr. Roy F. Tario by letter dated December 23, 2017. **(Exhibit Q)**.

## **ARGUMENT**

### The Board's Actions Violate Education Law § 2508 and Board Policy 3120

41. The Board's investigation is so riddled with procedural and substantive flaws that an objective, constructive and fair result is impossible. The flaws in the Board's investigation include and involve, but are not limited to, the following:

(i) The Board conducted its investigation in secret without involving the Petitioner.

(ii) The Board's investigation appears to be conducted in a manner intended to retaliate against the Petitioner for the exercise of her teacher transfer rights, the filing of her appeal to the Commissioner regarding the teacher transfer dispute, and the filing of her Notice of Claim.

(iii) The Board's five-day deadline to respond to the November 14 Aldinger report was unreasonable.

(iv) Special Counsel prepared two reports without interviewing, or even asking to interview, the High School Principal, the High School Assistant Principal, or Petitioner.

(v) Despite Petitioner's repeated requests, the Board refused to cooperate in her investigation, prohibited Petitioner from interviewing witnesses, and refused to provide District legal counsel to assist in her investigation. On December 15, 2017, the Board prohibited Petitioner from conducting any investigation into the graduation allegations.

(vi) On December 19, 2017, despite the fact that a proper investigation has not been conducted or concluded, the Board sent the Aldinger redacted report of November 15, 2017 to a reporter with the Poughkeepsie Journal.

(vii) Special Counsel intentionally refused to provide Petitioner's December 4 report to the Education Department.

42. Respondent's actions violate Education Law § 2508(1), which provides that the Superintendent possesses the power, and is charged with the duty, "[t]o be the chief executive officer of the school district and the educational system, and to have a seat on the board of education and the right to speak on all matters before the board, but not to vote."

43. Respondent's actions violate Education Law § 2508(2), which provides that the Superintendent possesses the power, and is charged with the duty, "[t]o enforce all provisions of law and all rules and regulations relating to the management of the schools and other educational, social and recreational activities under the direction of the board of education."

44. Respondent's actions violate Education Law § 2508(6), which provides that the Superintendent possesses the power, and is charged with the duty, "[t]o have supervision and direction over the enforcement and observance of the courses of study, the examination and promotion of pupils, and over ... all other educational activities...." Although this section provides that this authority is to be exercised under "the management, direction and control of the board of education," the Board cannot usurp, undermine, and trample the rights and duties of the Superintendent under the guise of "management, direction and control." In order for the Petitioner to exercise her authority and discharge her duties under Section 2508, Petitioner's input and management of the investigation must be required.

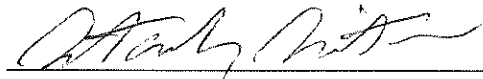
45. Respondent's actions also violate Board Policy 3120, which provides that "[t]he Superintendent of Schools shall supervise all matters affecting directly or indirectly the operations of the school system. He/she shall ensure that the administration of the school system is in conformity with existing laws, regulations and policies adopted by the Board of Education."



WHEREFORE, Petitioner respectfully requests an order as follows:

- (i) Declaring that the Board violated Petitioner's statutory authority by excluding her from the graduation investigation;
- (ii) Removing Special Counsel Todd Aldinger from all investigation duties and powers;
- (iii) Declaring the November 14, November 15 and December 15 Aldinger reports null and void;
- (iv) Declaring that the Board violated Petitioner's statutory authority by denying her access to counsel and directing her not to conduct her own investigation into the graduation of the 2013 cohort, declaring said directive null and void and directing the Board to allow Petitioner access to district-approved counsel in conducting an investigation into the graduation of the 2013 cohort;
- (v) Assigning the Department of Education with full oversight and direction of the graduation investigation; and
- (vi) for such other and further relief as the Commissioner may deem just, proper, and equitable.

Dated: December 29, 2017  
New City, NY



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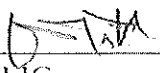
VERIFICATION

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

NICOLE WILLIAMS, being duly sworn, deposes and says that she is the petitioner in this proceeding; that she has read the annexed petition and knows the contents thereof; that the same is true to the knowledge of deponent except as to matters therein stated to be alleged upon information and belief, and as to those matters she believes them to be true.

  
\_\_\_\_\_  
NICOLE WILLIAMS

Sworn to before me this  
24<sup>th</sup> day of December, 2017

  
\_\_\_\_\_  
NOTARY PUBLIC

KAMAL P. SONI  
Notary Public, State of New York  
No. 01508089649  
Qualified in Kings County  
Commission Expires March 31, 2019

# EXHIBIT A



No. 17298

**The University of the State of New York**  
**The State Education Department**  
**Before the Commissioner**

Appeal of NICOLE WILLIAMS from action of the Board of Education of the City School District of the City of Poughkeepsie, Shereen Cader and John Sammon regarding teacher transfers.

Law Office of Stanley J. Silverstone, attorneys for petitioner, Stanley J. Silverstone, Esq., of counsel

Bond Schoeneck & King PLLC, attorneys for respondents, Howard M. Miller, Esq., of counsel

Petitioner appeals from a July 14, 2017 resolution of the Board of Education of the City School District of the City of Poughkeepsie ("respondent board") which placed a moratorium on all involuntary transfers of teachers and administrators for the 2017-2018 school year, as well as board directives issued on September 1, 2017 and actions taken by two tenured teachers, Shereen Cader ("respondent Cader") and John Sammon ("respondent Sammon") in conformity therewith. The appeal must be sustained in part.

At all times relevant to this appeal, petitioner was the superintendent, and respondents Cader and Sammon were tenured teachers within respondent board's district.

On July 16, 2015, Poughkeepsie Middle School ("PMS" or the "receivership school") in respondent's district, was designated a "struggling school" pursuant to Education Law

§211-f(1)(a).<sup>1</sup> Petitioner was vested with the authority of superintendent receiver with respect to PMS pursuant to Education Law §211-f(2) and continues to exercise such duties as of the time of this decision.<sup>2</sup>

On June 15, 2017, respondent Cader was informed by her building principal that she would be transferred from Krieger Elementary School to Warring Elementary School in respondent's district for the 2017-2018 school year. On the same day, respondent Sammon was informed by his building principal that he would be transferred from teaching fourth grade at Warring Elementary School to teaching fifth grade at Krieger Elementary School in respondent's district. Both teachers objected to their reassignments and did not comply with these directives.

On July 14, 2017, respondent board adopted Resolution 18-0013 which "place[d] a moratorium on all involuntary transfers of teachers and administrators for the 2017-2018 school year pending further study by the Board."

On August 28, 2017, petitioner issued six directives transferring teachers in respondent board's district to different school assignments. While respondents Cader and Sammon were informed in June 2017 that they would be transferred to different elementary schools, petitioner's August 28, 2017 directives transferred respondents Cader and Sammon to PMS. Four teachers complied with petitioner's directives; respondents Cader and Sammon did not.

Also on August 28, 2017, petitioner wrote to respondent board, informing it of the six transfers including those of respondents Cader and Sammon, and affirmatively stated that she was "exercising [her] authority" pursuant to Education Law §211-f to "[s]upersede a decision [i.e., the July 14, 2017 resolution] made by the Board of Education." Petitioner further explained, in her view, "why the [July 14, 2017] Board directive ... [wa]s legally impermissible." Attached to this letter was a

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<sup>1</sup> With respect to the takeover and restructuring of schools, the Education Law refers to "failing" and "persistently failing" schools while the Commissioner's regulations refer to such schools as "struggling" and "persistently struggling" schools. All references herein conform to the Commissioner's regulations.

<sup>2</sup> On or about October 26, 2017, the Commissioner notified petitioner that the Poughkeepsie Middle School made demonstratable improvement pursuant to Education Law §211-f.

document explaining, among other things, the reasons why petitioner ordered the involuntary transfers.<sup>3</sup>

On August 30, 2017, respondent board's president emailed petitioner on behalf of the board at 10:28 a.m., objecting to petitioner's directives and requesting that petitioner provide answers to five questions relating to each teacher's transfer by 5:00 p.m. that same day and reminded petitioner that the July 14 board resolution remained in effect. The questions included queries as to why petitioner ordered the August 28, 2017 transfers and why the transfers were proposed so close to the beginning of the school year. Petitioner responded to each of respondent board's questions within the requested timeframe. In her response, petitioner stated that she had ordered the transfers "[t]o support the Receivership school/Struggling school." With specific respect to respondent board's query as to why the transfers were proposed so close to the beginning of the school year, petitioner answered that the "[b]oard issued a moratorium."

On September 1, 2017, respondent board issued separate letters to respondents Cader and Sammon advising them "to disregard the letter[s] [they] may have received" from petitioner "and report to the same school building that you served in during the 2016-2017 school year that is NOT in 'Receivership'" (emphasis in original).<sup>4,5</sup> This appeal ensued.

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<sup>3</sup> Petitioner and respondents have submitted different versions of this document. Specifically, petitioner's version contains two notes with respect to respondents Cader and Sammon indicating that they "did not transfer" in June or August. These typed notations are not included in respondents' version. Respondents have submitted an affidavit from the district's director of technology attesting that the letter and attachment were sent via email, and that respondents' version represents what was received by respondents. Counsel for petitioner, in a submission which I have accepted pursuant to 8 NYCRR §276.5, indicates that the version of the document which he submitted was a digital version maintained by petitioner. Counsel for petitioner further admits that petitioner added the additional notations after she submitted the document to respondent board, but denies any wrongdoing in connection therewith. Therefore, I accept respondents' affidavit and evidence pursuant to 8 NYCRR §276.5 and have relied solely on the version submitted by respondents.

<sup>4</sup> A substantially identical copy of this letter was sent to another of the six teachers who was transferred by petitioner. However, that teacher complied with petitioner's directive and, thus, is not the subject of this appeal.

<sup>5</sup> On September 13, 2017, respondent Cader received an email from petitioner's secretary stating that she was suspended immediately and that her actions could result in potential charges under Education Law

Petitioner contends that respondent board's July 14, 2017 Resolution, imposing a moratorium on involuntary transfers for the 2017-2018 school year, interfered with her authority as superintendent receiver of PMS. She further asserts that the July resolution violates Education Law §§1711 and 2508 because those provisions give a superintendent authority to transfer teachers in the first instance. Petitioner also asserts that the six directives issued by respondent board in September 2017 violate her receivership authority under Education Law §211-f. Petitioner seeks a determination that respondent board's July 14, 2017 resolution and its September directives are null and void and petitioner requests that I confirm the validity and enforceability of all teacher transfers. Petitioner also seeks a determination that Board Policy 9420 is null and void to the extent it grants the board power to approve or disapprove teacher transfers beyond the authority granted by the New York State Education Law.

Respondents contend that respondent board's actions were "lawful and necessary to protect its students and staff." Respondents further argue that petitioner's August 28, 2017 transfers did not represent the best interests of the district; that petitioner did not immediately report the transfers to respondent board; and that petitioner acted with retaliatory or otherwise improper motives.<sup>6</sup> In

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§3020-a. On September 14, 2017, respondent board rescinded the suspension and returned respondent Cader to Krieger Elementary School. <sup>6</sup> Respondent Cader also summarily asserts in her affidavit that she was transferred involuntarily and that her teaching location preference was disregarded in violation of a collective bargaining agreement ("CBA") between the Poughkeepsie Teachers' Association and respondent board. Respondents did not raise this claim in their answer. Accordingly, this claim is not before me for review. But even assuming, *arguendo*, that respondents had raised this claim in their answer, I would decline to address this claim because the Civil Service Law vests exclusive jurisdiction over complaints involving collective bargaining in the Public Employment Relations Board (Civil Service Law §205(5)(d); see New York City Transit Authority v. New York State Public Employment Relations Board, et al., 19 NY3d 876). Although the Commissioner has assumed jurisdiction over a CBA which explicitly contemplated an appeal pursuant to Education Law §310 as part of its grievance procedure, neither party has asserted that the CBA here includes such a provision (Appeal of Eastern Suffolk Bd. of Cooperative Educ. Svcs. Administrative/Supervisory Unit, 52 Ed Dept Rep, Decision No. 16,413). Therefore, the effect of the CBA on the challenged actions is not before me and will not be addressed herein. Moreover, Education Law §211-f(8) provides that, in order to maximize the rapid achievement of students at the applicable school, the receiver may request that the collective bargaining unit(s) representing teachers and administrators

their answer, respondents waived any defense as to timeliness and instead, requested a "'swift' determination on the merits."

First, I must address a procedural matter. Respondents' memorandum of law contains newly raised assertions. A memorandum of law should consist of arguments of law (8 NYCRR §276.4) and may not be used to add belated assertions or exhibits that are not part of the pleadings (Appeal of Bruning and Coburn-Bruning, 48 Ed Dept Rep 84, Decision No. 15,799; Appeal of Wright, 47 *id.* 202, Decision No. 15,668). Therefore, I have not considered any arguments which respondents raise for the first time in their memorandum of law.

Further, to the extent the parties dispute the validity of the June 2017 transfers of respondents Cader and Sammon, such claims must be dismissed as moot. The Commissioner will only decide matters in actual controversy and will not render a decision on a state of facts which no longer exist or which subsequent events have laid to rest (Appeal of a Student with a Disability, 48 Ed Dept Rep 532, Decision No. 15,940; Appeal of M.M., 48 *id.* 527, Decision No. 15,937; Appeal of Embro, 48 *id.* 204, Decision No. 15,836). The June 2017 orders transferring respondents Cader and Sammon to Warring Elementary School and Krieger Elementary School, respectively, have been superseded by petitioner's August 28, 2017 directives which transferred respondents Cader and Sammon to PMS. Therefore, to the extent the parties raise claims or defenses with respect to the June 2017 transfers, this issue has been rendered academic by petitioner's August 28, 2017 directives and need not be addressed.

Additionally, in their answer respondents request that petitioner be removed as superintendent and receiver pursuant to Education Law §306. However, respondents have not filed a removal application pursuant to that section or cited any authority or basis for petitioner's removal "as receiver" in an appeal pursuant to Education Law §310 and,

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and the receiver, on behalf of the board of education, negotiate a receivership agreement that modifies the applicable collective bargaining agreement(s) with respect to any struggling schools in receivership applicable during the period of receivership. Neither party has addressed whether such a receivership agreement was in effect for PMS.



therefore, I need not address respondents' contentions in this regard.<sup>7</sup>

Turning to the merits, in an appeal to the Commissioner, a petitioner has the burden of demonstrating a clear legal right to the relief requested and the burden of establishing the facts upon which petitioner seeks relief (8 NYCRR §275.10; Appeal of Aversa, 48 Ed Dept Rep 523, Decision No. 15,936; Appeal of Hansen, 48 id. 354, Decision No. 15,884; Appeal of P.M., 48 id. 348, Decision No. 15,882).

Petitioner first contends that respondent board's July 14, 2017 resolution prohibiting involuntary transfers in the 2017-2018 school year violates Education Law §2508. I agree. With specific respect to city school districts with less than one hundred twenty-five thousand inhabitants, pursuant to Education Law §2508(5), a superintendent within such a district has the authority:

to transfer teachers from one school to another, or from one grade of the course of study to another grade in such course, and to report immediately such transfers to such board for its consideration and action.

The plain language of Education Law §2508 bestows the superintendent with the authority "to transfer teachers from one school to another." Moreover, the authority of a superintendent to assign teachers "has been held to be absolute in the absence of contractual provision otherwise or of malice, bad faith, gross error or prejudice" (Alderstein v. Bd. of Educ. of the City of New York, 64 NY2d 90). Although such decisions must be "report[ed] immediately" to the board "for its consideration and action," a board may not circumvent this procedure by removing the superintendent's authority to make such transfers in the first instance. While respondent board argues that the resolution was "lawful and necessary to protect its students and staff," respondent board has not explained how it was prohibited from "protect[ing]" its students and staff under the existing statutory procedure,

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<sup>7</sup> Additionally, there is no basis in the record to, as respondents request, initiate a proceeding pursuant to Part 83 of the Commissioner's regulations regarding petitioner's moral character.

where it retained ultimate authority to disallow any such transfer. Therefore, I find that the July 14, 2017 "moratorium on all involuntary transfers of teachers and administrators" conflicts with the superintendent's general authority to transfer teachers in the first instance under Education Law §2508 and must be annulled.

Moreover, I find that respondent board's September 1, 2017 directives to these teachers unlawfully interfered with petitioner's powers as a superintendent receiver to supersede a board's decision pursuant to Education Law §211-f. In April 2015, the Legislature enacted Subpart H of Part EE of Chapter 56 of the Laws of 2015 which added a new section (211-f) to the Education Law pertaining to school receivership. Section 211-f designates a school that has been identified as a "priority school" in each applicable year of the three consecutive school year period comprising 2012-2013, 2013-2014 and 2014-2015,<sup>8</sup> as "failing schools" (referred to in §100.19[a][1] of the Commissioner's regulations, and hereinafter, as "struggling schools") and vests the superintendent of the district with the powers of an independent receiver. As relevant to this appeal, PMS was designated a struggling school and petitioner, as a "superintendent receiver," was given two years to improve student performance. If it failed to demonstrate improvement at the conclusion of the two-year period, an independent receiver would be appointed. On October 27, 2017, the Commissioner notified petitioner that PMS made demonstrable improvement and therefore, the school continues to operate under the authority of petitioner, as superintendent receiver.

Education Law §211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; replace teachers and administrators, including school leadership who are not appropriately licensed or certified; establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational

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<sup>8</sup> The law provides an exception for one school year in which the school was not identified because of an approved closure plan that was not implemented.

structure; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee.

In addition, and as relevant to this appeal, a receiver, including a superintendent receiver,

shall [also] be authorized to manage and operate the failing or persistently failing school and shall have the power to supersede any decision, policy or regulation of the superintendent of schools or chief school officer, or of the board of education or another school officer or the building principal that in the sole judgment of the receiver conflicts with the school intervention plan; provided however that the receiver may not supersede decisions that are not directly linked to the school intervention plan, including but not limited to building usage plans, co-location decisions and transportation of students (Education Law §211-f[2][b] [emphasis added]).

A receiver may invoke the power to supersede so long as the receiver notifies the board of education, superintendent of schools or chief school officer, and the principal in writing "not fewer than 10 business days prior to the effective date of the supersession of the specific decision, policy or regulation that the receiver plans to supersede" (8 NYCRR §100.19[g][7]; see generally Education Law §211-f[2][b]). In such a written notice of supersession, the receiver must provide:

[T]he reasons for supersession; the specific decision, policy, or regulation that will replace the one that shall be superseded; and the time period during which the supersession shall remain in effect (8 NYCRR §100.19[g][7]).

Petitioner asserts in an affidavit that she became "aware in August 2017 of more staff vacancies at

Poughkeepsie Middle School [i.e., the receivership school] than anticipated." She also states that she decided to transfer two teachers out of the receivership school due to their poor performance pursuant to her receivership authority under Education Law §211-f.<sup>9</sup> Petitioner further states in her reply affidavit that:

Ensuring that there are effective teachers in the classrooms in [the receivership school], as well as all schools in the district is the single most important strategy I have as a superintendent receiver and the superintendent of [respondent board's district] for increasing student learning and academic achievement. Matching skill to the needs is critically important.

On August 28, 2017, petitioner wrote to respondent board, informing it of the six transfers, including those of respondents Cader and Sammon, and affirmatively stated that she was "exercising [her] authority" pursuant to Education Law §211-f to "[s]upersede a decision [i.e., the July 14, 2017 resolution] made by the Board of Education." Petitioner further explained, in her view, "why the [July 14, 2017] Board directive ... [wa]s legally impermissible." Attached to this letter was a document explaining, among other things, the reasons why petitioner ordered the involuntary transfers. With respect to respondent Cader, petitioner stated: "[r]eceivership needs/skill set match for the sixth (6) grade. Certification is aligned with the instructional needs at PMS." With respect to respondent Sammon, petitioner indicated: "[r]eceivership needs/skill set match for the sixth (6) grade. Certification is aligned with the instructional needs at PMS as a former instructional ELA coach."

In an email to petitioner dated August 30, 2017, the board president stated: "[t]his will acknowledge receipt of your letter dated August 28, 2017 regarding teacher transfers." Petitioner's position, as expressed in the August 28, 2017 letter to the board and on appeal, is that the July 14, 2017 resolution violated the Education Law.

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<sup>9</sup> Petitioner asserts in her reply affidavit that it is not uncommon to transfer teachers in August because circumstances may change after the end of the school year.

Petitioner also advised respondents of the "time period during which the supersession would remain in effect"; i.e., the 2017-2018 school year (8 NYCRR §100.19[g](7)). Thus, the record demonstrates that petitioner followed the supersession procedure outlined in 8 NYCRR §100.19(g)(7).

I also find that the August 28, 2017 transfers were "directly linked to the school intervention plan" as required by Education Law §211-f(2)(b). The school intervention continuation plan for PMS for the 2017-2018 school year explicitly identified "excessive teacher absences and turnover" as a concern, and noted that "staffing continues to be a challenge." The plan also includes a summary of concerns/recommendations from the community engagement team established pursuant to 8 NYCRR §100.19(b), which included, among other things, that teachers at PMS were teaching two or more subjects. Thus, I find that the board's July 14, 2017 and September 1, 2017 decisions to prohibit involuntary transfers directly conflicted with the school intervention plan by prohibiting petitioner from ensuring that there was adequate staff to address shortages and staffing at the receivership school (Education Law §211-f(2)(b)).

Respondents also assert that the transfers were not in the best interest of the district and did not serve any educational purpose. However, the record reflects that petitioner became aware of more staff vacancies than expected at PMS in August 2017 and that she decided to transfer two low-performing teachers out of the receivership school. Respondents admit in their answer that respondents Cader and Sammon are "two of the [d]istrict's most accomplished elementary educators [and] members of their respective school's Transformation Teams," and it is beyond cavil that these accomplished educators' skills would aid the receivership school. Further, in her August 28, 2017 letter, petitioner indicated that respondents Cader and Sammon were transferred based upon the "[r]eceivership needs" of PMS and the fact that their "skill set[s]" were a "match for the sixth (6) grade" and that their certifications were "aligned with the instructional needs at PMS." Petitioner also asserted in this letter that respondent Sammon's experience as a "former instructional ELA coach" matched the needs at PMS.

Respondent Cader argues that petitioner's transfer order was irrational because respondent Cader has never taught a sixth-grade classroom and has never taught at PMS. Respondent Sammon argues that he was asked to teach a subject he had never taught before. However, petitioner refutes these assertions. In her reply affidavit, petitioner states as follows:

[B]oth teachers are properly certified to teach 6<sup>th</sup> grade. In the 6<sup>th</sup> grade, teachers receive professional development daily, so they would have been brought up to the level of competence quickly as the focus is on literacy strategies, which is across grade levels. In the middle school, Cader and Sammon would have been part of a team with only one subject to prepare for as opposed to all the core subjects in elementary school. We use an interdisciplinary literacy approach, so they would have been well prepared to support a humanities team approach. Mr. Sammon, with his background and experience in academic coaching, would not have had difficulty in transferring to the middle school on short notice.

Petitioner further asserts that respondent Cader has taught "every summer in the transitional 6<sup>th</sup> grade summer program" for at least the past three years.<sup>10</sup>

While I acknowledge that the record contains conflicting evidence as to the benefits and appropriateness of petitioner's transfers, this evidence does not demonstrate that petitioner acted with such malice, bad faith, gross error or prejudice which might justify setting the transfers aside (Alderstein v. Bd. of Educ. of the City of New York, 64 NY2d 90; see Matter of Woicik, 2 Ed Dept Rep 171, Decision No. 7,019). Respondents further assert

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<sup>10</sup> Respondent also submits an affidavit from the principal of Warring Elementary School, who provides that the "last minute decision to transfer Mr. Sammon makes no educational sense". I find this affidavit unconvincing. The principal does not provide any reason/rationale as to why the transfer was illegal and/or how the transfer would not made for the educational benefit of the students in PMS. On the contrary, the principal himself merely states that respondent Sammon is "Warring's top educator" and as a result should not be transferred to PMS.

that petitioner's August 28 transfer orders constituted retaliation for certain actions, including respondent Sammon's declination of "a position in central administration," which petitioner "conveyed to [him] through another administrator." However, petitioner denies that she offered respondent Sammon such a position, and the record contains no proof substantiating respondent Sammon's allegations in this regard.<sup>11</sup> Therefore, I find that respondents have failed to demonstrate that petitioner's actions were committed with such malice, bad faith, gross error or prejudice which might justify setting the transfers aside.

I am similarly unpersuaded by respondents' argument that Education Law §211-f does not permit the challenged transfers because they would "eviscerate critical resources from every other school building in the [d]istrict." Education Law §211-f sets forth two limitations on a receiver's supersession powers: (1) any supersession must be "directly linked to the school intervention plan"; and (2) a supersession cannot relate to a superintendent's employment status (see Education Law §211-f[1][c][i], [2][b])). Given this unambiguous language, I decline to read additional exceptions into the statute. In any event, I note that respondents have submitted no proof to support a finding that, in fact, the transfers threatened the resources of every school building in respondent board's district. Therefore, I find respondents' arguments without merit.

Petitioner additionally requests that I declare Board Policy 9420 null and void insofar as it permits the board to unilaterally effectuate teacher transfers. Respondent board's Policy 9420 provides, in pertinent part:

Within the provisions of the appropriate negotiated contracts and state laws, the Superintendent of Schools will assign, transfer and reclassify district personnel subject to Board of Education approval.

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<sup>11</sup> Petitioner admits, however, that respondent Sammon was given an opportunity to create a teachers' center at Warring Elementary School in the 2013-2014 school year, and that after this program was discontinued in 2015-2016, respondent Sammon returned to his position as a classroom teacher.

Since respondent board's Policy 9420 includes language that says "[w]ithin the provisions of . . . state laws," I find that any superintendent transfers must be conducted in accordance with Education Law §§2508 and 211-f, as well as any other applicable State laws. Therefore, I decline to declare Board Policy 9420 null and void.

Respondents Cader and Sammon have requested certificates of good faith pursuant to Education Law §3811. Such certification is solely for the purpose of authorizing the board to indemnify a respondent for legal fees and expenses incurred in defending a proceeding arising out of the exercise of his or her powers or performance of duties as a board member or other title listed in §3811(1). It is appropriate to issue such certification unless it is established on the record that the requesting respondent acted in bad faith (Application of Valentin, 56 Ed Dept Rep, Decision No. 17,014; Application of Paladino, 53 id., Decision No. 16,594; Application of Lieberman, 52 id., Decision No. 16,483). However, Education Law §3811 applies only to board members, certain school officers and "non-instructional district employees." Respondents Cader and Sammon are tenured teachers and, thus, do not fall within the scope of Education Law §3811. Accordingly, they are not entitled to the requested certificate.

Finally, I am compelled to comment on the acrimonious relationship between petitioner and respondents detailed in the record. Although petitioner and respondent board reached differing conclusions as to the permissibility of the teacher transfers, it is troubling that the parties resorted to issuing competing directives, thereby forcing



the affected teachers to decide whether they should obey the superintendent or the board. Further, the nature and tenor of the serious accusations made as part of this appeal reveal an unacceptable level of rancor that is not conducive to the effective governance of a public school district. I admonish the parties to take all steps necessary to ensure that this controversy does not continue and that the district's leadership and resources are focused on the paramount goal of providing successful outcomes for students. To this end, I am directing my Office of Innovation and School Reform to provide guidance and technical assistance to the district in order to ensure that all parties understand, and are in compliance with, the requirements related to the receivership school.

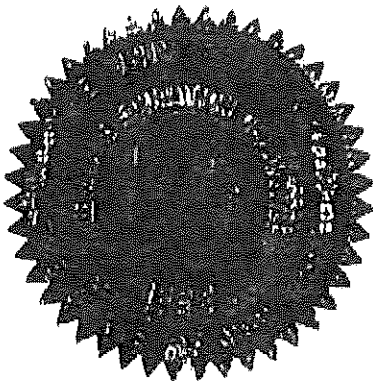
In light of the above disposition, I need not address the parties' remaining contentions.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

IT IS ORDERED that respondent board's July 14, 2017 resolution is hereby annulled; and

IT IS FURTHER ORDERED that respondent board's September 1, 2017 directives are hereby annulled; and

IT IS FURTHER ORDERED that petitioner's August 28, 2017 transfer orders be given full legal force and effect.



IN WITNESS WHEREOF, I, MaryEllen Elia, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department at the City of Albany, this 22<sup>nd</sup> day of December 2017.

*MaryEllen Elia*  
Commissioner of Education

# **EXHIBIT B**



Poughkeepsie City Schools - Board of Education Agenda Item

**Agenda Item Details**

Meeting	Jul 07, 2017 - Annual Reorganizational Meeting of the Board of Education
Category	10. BOARD OF EDUCATION/ACTION ITEMS
Subject	10.5 Approval to Hire Special Counsel
Type	Action
Recommended Action	<p>WHEREAS, the Board of Education of the Poughkeepsie City School District (the "Board") has determined to hire special counsel to perform internal investigations surrounding the 2016 and 2017 elections and any other alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate and to prepare a report of the findings of such investigations, so that the Board may uncover facts and pursue appropriate courses of action; and NOW, THEREFORE, be it RESOLVED, that the Board will retain the services of Todd J. Aldinger, Esq., as special counsel on July 17, 2017; and be it</p> <p>RESOLVED, that, as special counsel, Todd J. Aldinger, Esq. will perform one or more internal investigations and prepare a report of the findings of such investigations to the Board; and be it</p> <p>RESOLVED, that Todd J. Aldinger, Esq. or any associate of his shall be compensated at an hourly rate of \$175.00 per hour, and be it</p> <p>RESOLVED, that the President of the Board has been authorized by the Board of Education to sign a retainer agreement for the services of Todd J. Aldinger, Esq.</p>

**Motion & Voting**

WHEREAS, the Board of Education of the Poughkeepsie City School District (the "Board") has determined to hire special counsel to perform internal investigations surrounding the 2016 and 2017 elections and any other alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate and to prepare a report of the findings of such investigations, so that the Board may uncover facts and pursue appropriate courses of action; and NOW, THEREFORE, be it RESOLVED, that the Board will retain the services of Todd J. Aldinger, Esq., as special counsel on July 17, 2017; and be it

RESOLVED, that, as special counsel, Todd J. Aldinger, Esq. will perform one or more internal investigations and prepare a report of the findings of such investigations to the Board; and be it

RESOLVED, that Todd J. Aldinger, Esq. or any associate of his shall be compensated at an hourly rate of \$175.00 per hour, and be it

RESOLVED, that the President of the Board has been authorized by the Board of Education to sign a retainer agreement for the services of Todd J. Aldinger, Esq.

Motion by Doreen Clifford, second by Debra Long.

Final Resolution: Motion Carries

Yea: Felicia Watson, Doreen Clifford, Debra Long

Nay: Raymond Duncan, Randall Johnson

# **EXHIBIT C**

## LEGAL MEMORANDUM

~~PROTECTED BY ATTORNEY-CLIENT PRIVILEGE~~

This redacted memorandum reflects a partial waiver of the attorney-client privilege. This waiver has been agreed to by a majority of the PCSD school board members for the purpose of informing the public, their constituents, of this important investigation. There is no intent to waive attorney-client privilege in any way beyond the non-redacted text contained in this memorandum at this time. However, it is the intent of Board to make all information uncovered in this investigation public, to the furthest extent allowed by law, at an appropriate time after this investigation is concluded.

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Felicia Watson, School Board President

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Doreen Clifford, School Board Vice President

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Debra Long

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Raymond Duncan

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Randall Johnson

students; (2) appeals to graduate with a lower score on a Regents exam, along with transcripts and attendance details for those students; and (3) transcripts of students who graduated with less than 22 credits. I proceeded to analyze these documents, research the applicable laws and regulations, confer anonymously with state and federal authorities, and meet with a number of witnesses and whistleblowers. While undertaking this investigation, numerous other issues regarding questionable graduations have also come to my attention. As such, this memorandum only represents a preliminary result of my inquiry.

In summary, through interviews and documents reviews, my investigation has uncovered more than forty (40) PCSD students who graduated under questionable circumstances in 2017. Below I detail my findings on each of the issues I have thoroughly examined at this point. I begin by laying out the legal background of the topic in question. Next, I summarize the issues I have uncovered relating to each topic. Finally, I analyze each specific student for which I have grounds for questioning the propriety of their graduation.

The next step that the Board should take in this process should be to provide this memorandum to the Superintendent, the High School Principal, and other relevant faculty. Those individuals should be asked to address each and every concern in this memorandum. If these concerns remain

are designed to meet individual educational needs of handicapped persons as adequately as the needs of non-handicapped persons are met.” (34 CFR 104.33[b]). Section 504 Plans may provide for aids and services such as:

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans
- Rearranging class schedules
- Visual aids
- Preferred seating assignments
- Taping lectures
- Oral tests

As such, Section 504 Plans are clearly meant to further the education of the 504 designated individual. Thus, it is proper to put Section 504 Plans into effect as early as possible in a student’s education so they can take advantage of these accommodations for as much of their education as possible. Unreasonable and unnecessary delay in providing needed and appropriate accommodations may be interpreted as denying students their civil rights under Section 504.

A. Summary of Issues with Section 504 Meetings and Plans

Unfortunately PCSD seems to have used Section 504 Plans to grant the Safety Net low-pass option to marginal students at the last minute. For example, in 2017, students [REDACTED] were given Section 504 Plans the day before they took summer school finals after their senior year.

Additional evidence that certain Section 504 meetings were suspect can be seen from [REDACTED] mischaracterizing the attendance records of students being evaluated in Section 504 Meetings. In student [REDACTED] Section 504 eligibility meeting [REDACTED] is quoted as saying the student's attendance was good. In the 2016-2017 school year, this student was absent without excuse from first period 113 times, second period 67 times, third period 33 times, fourth period 46 times, fifth period 40 times, sixth period 39 times, seventh period 34 times, eighth period 46 times, and ninth period 36 times. [REDACTED] similarly is quoted as saying that student [REDACTED] attendance was good in that student's Section 504 eligibly meeting. In 2017, this student was absent without excuse from first period 77 times, second period 50 times, third period 51 times, fifth period 67 times, sixth period 53 times, seventh period 53 times, eighth period 52 times, and ninth period 59 times. It appears that neither of these two students complied with PCSD Attendance Policy 5100 for ANY of their classes in 2016-2017 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further a member of the Section 504 Committee making the Section 504 eligibility determinations for students [REDACTED] indicated that he/she had to take [REDACTED] word for these students' attendance



designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.” (34 CFR 104.33[a], [b]). A handicapped person’s educational needs are not met as adequately as nonhandicapped persons when the handicapped person only receives education related aids and services days before their last ever high school exam, or even more egregiously, after their last exam.

Lastly, a Section 504 eligible student can only be graduated with the low-pass option if low-pass option is specifically granted as an accommodation in that student’s Section 504 Plan. The low-pass option is not automatically granted to every student with a Section 504 Plan because state and federal laws require that all accommodations be specific to each student. My review found this might not always have done. Witnesses reported that certain students were not specifically granted the Safety Net low-pass option; nevertheless, these same students appear to have been graduated utilizing the low-pass option.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[illegible]



[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Students can graduate with exam scores lower than a 65 pursuant to an appropriate Appeal to Graduate with a Lower Score on A Regents Examination (“Appeal”). To qualify for such an Appeal, a student must meet the following criteria as set forth at 8 NYCRR 100.5(a)(7)(i)(a):

A student who first enters grade nine in September 2005 or thereafter and who fails, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

1. has scored within five points of the 65 passing score on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal;
2. provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal;
3. has attained a course average in the subject area of the Regents examination under appeal that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; **and**
4. is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination. [emphasis added]

Slightly different criteria are set forth at set forth at 8 NYCRR 100.5(a)(7)(i)(c) for students with disabilities:

- c. A student who is otherwise eligible to graduate in January 2016 or thereafter, is identified as a student with a disability as defined in section

examination. These separate criteria are conjoined by “ands;” therefore *the absence of any one of these criteria makes the student ineligible for an Appeal to Graduate with a Lower Score on A Regents Examination.*

“An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.” (8 NYCRR 100.5[a][7][ii]).

Once an appeal is initiated, state regulations require the school principal to “chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal.” (8 NYCRR 100.5[a][7][iii]).

After the recommendation is made “[t]he school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State





[REDACTED]

[REDACTED]

### 3. General Graduation Requirements

Generally students are required to have obtained 22 credits to graduate. Unless an exception applies, these 22 credits must include 4 credits in English, 3 credits in math, 3 credits in science, 3 credits in social studies, and 2 credits in physical education. Additionally, a student must receive passing grades, over a 65%, on five regents examinations, unless they qualify for the 4+1 program.

#### A. Summary of Issues with General Graduation Requirements

In 2017 there appears to be: (1) instances of students graduating with less than 22 credits; (2) instances of students graduating without fulfilling the subject matter credit distribution requirements; and (3) instances of students graduating without receiving a passing grade on five regents examinations.

#### B. Issues with Specific Students' General Graduation Requirements

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# EXHIBIT D



Poughkeepsie City Schools - Board of Education Agenda Item

**Agenda Item Details**

Meeting	Nov 15, 2017 - Regular/Community Workshop Forum Meeting
Category	10. ACTION ITEMS BOARD OF EDUCATION
Subject	10.2 Other - Board Approved Resolution Special Counsel Report - Resolution #18-0236
Type	Action
Recommended Action	<p>WHEREAS, the Board of Education of the Poughkeepsie City School District (the "Board") previously retained Todd J. Aldinger, Esq. as special counsel to perform internal investigations regarding any alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate and to prepare a report of the findings of such investigations, so that the Board may uncover facts and pursue appropriate courses of action; and</p> <p>WHEREAS, the Board of Education received allegations regarding graduation eligibility for the 2013 Cohort during a presentation entitled Graduation Cohort Analysis presented by Dr. Elizabeth TenDyke, Director of Data Analysis and Accountability at a public meeting of the Board of Education on September 6, 2017; and</p> <p>WHEREAS, the Board has received a report from special counsel indicating potential misconduct, fraud or other crimes related to the graduation of certain students in 2017</p> <p>NOW, THEREFORE, be it RESOLVED, that the President of the Board has been authorized by the Board of Education to direct Special Counsel to communicate his current findings and any future findings that result from his ongoing investigation into improper or questionable graduations from the Poughkeepsie City School District to the appropriate Federal, State and County authorities, including, but not limited to: the New York State Department of Education, the Office of Civil Rights, the Comptroller of New York, the Attorney General of New York, and the Dutchess County District Attorney.</p>

**Motion & Voting**

WHEREAS, the Board of Education of the Poughkeepsie City School District (the "Board") previously retained Todd J. Aldinger, Esq. as special counsel to perform internal investigations regarding any alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate and to prepare a report of the findings of such investigations, so that the Board may uncover facts and pursue appropriate courses of action; and

WHEREAS, the Board of Education received allegations regarding graduation eligibility for the 2013 Cohort during a presentation entitled Graduation Cohort Analysis presented by Dr. Elizabeth TenDyke, Director of Data Analysis and Accountability at a public meeting of the Board of Education on September 6, 2017; and

WHEREAS, the Board has received a report from special counsel indicating potential misconduct, fraud or other crimes related to the graduation of certain students in 2017

NOW, THEREFORE, be it RESOLVED, that the President of the Board has been authorized by the Board of Education to direct Special Counsel to communicate his current findings and any future findings that result from his ongoing investigation into improper or questionable graduations from the Poughkeepsie City School District to the appropriate Federal, State and County authorities, including, but not limited to: the New York State Department of Education, the Office of Civil Rights, the Comptroller of New York, the Attorney General of New York, and the Dutchess County District Attorney.

Motion by Doreen Clifford, second by Debra Long.

Final Resolution: Motion Carries

Yea: Felicia Watson, Debra Long, Doreen Clifford

Nay: Raymond Duncan, Randall Johnson

# **EXHIBIT E**

From: Victoria Jackson <[vjackson@poughkeepsieschools.org](mailto:vjackson@poughkeepsieschools.org)>  
Date: November 16, 2017 at 11:59:35 AM EST  
To: "Dr. Nicole Williams" <[nwilliam@poughkeepsieschools.org](mailto:nwilliam@poughkeepsieschools.org)>  
Subject: Legal Memorandum

Dr. Williams,

Please see the attached Legal Memorandum (protected by Attorney-Client Privilege). As discussed by the Board of Education, the majority has agreed that each and every concern raised in this memorandum should be addressed no later than close of business (5:00 p.m.) Tuesday, November 21, 2017.

I have delivered a hard copy of the attached to Ms. Torres in a sealed envelope marked Confidential.

You are reminded that this document is protected by attorney-client privilege and should not be shared with any other individuals.

Best regards,  
Victoria Jackson

Board Clerk - Poughkeepsie City School District  
11 College Avenue  
Poughkeepsie, NY 12601  
845-451-4974 - Telephone

# EXHIBIT F

*LAW OFFICE OF*  
**STANLEY J. SILVERSTONE**

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10 Esquire Road, Suite 12  
New City, NY 10956  
Tel. (845) 215-9522  
Fax (845) 215-0131  
Email: [sjs@sjsilverstone.com](mailto:sjs@sjsilverstone.com)

November 18, 2017

BY E-MAIL AND U.S. MAIL

Howard Miller, Esq.  
Bond, Schoeneck & King, PLLC  
1010 Franklin Avenue, Suite 200  
Garden City, NY 11530-2900

Re: Dr. Nicole Williams

Dear Mr. Miller:

It has come to my attention that the Board has issued a directive to Dr. Williams requiring her to respond to "each and every concern" raised in a confidential Memorandum regarding compliance with graduation requirements by the close of business on November 21, 2017. My client informs me that the Memorandum is twenty-seven (27) pages long and represents an investigation that took over two months to complete. The Board's directive was made in bad faith and is both improper and unreasonable. Therefore, I am advising you that my client is not bound by the deadline contained therein.

It is outrageous enough that Dr. Williams, the chief officer of the District, was not made aware of the more than two-month-old investigation until after it was concluded, and that the investigator did not bother to interview her before reaching his conclusions. But the audacity of the Board to expect a full response a mere six days after the report was provided to her is, without any doubt, totally unreasonable and unenforceable. Furthermore, the fact that Dr. Williams was not involved in the investigation leads to the inescapable conclusion that the investigation was not a truth-finding mission at all, but a thinly-veiled attempt to entrap, harm, harass and humiliate her. And the ridiculous deadline, which is completely incapable of compliance, is simply more evidence to the same effect.

To be clear, Dr. Williams is objecting to the deadline contained in the directive and is not claiming that the requirement of providing a response is improper. Dr. Williams informs me that there is information referenced in the Memorandum with which she has not been provided, yet is indispensable to providing a thorough response. Clearly, there is information that is being withheld from Dr. Williams. According to Board member Ray Duncan, quoted in the November 16



Poughkeepsie Journal, the investigation report "is about 200 pages long." Thus, Dr. Williams has been provided with only a tiny percentage of the complete report. Dr. Williams will provide a list of such withheld information to the Board by next week and will need a reasonable time after it has been provided to conduct her own investigation and prepare her response. Had she been involved in the process, Dr. Williams would have made the requests for this information, and given her input about it long ago.

Please be further notified that any disciplinary action taken against my client for failure to comply with the deadline contained in the Board's directive will be deemed further harassment and bad faith by the Board and may subject the Board to legal action.

Finally, please be advised that Dr. Williams hereby notifies the Board that she is exercising her contractual rights pursuant to Section 16 of her Employment Agreement with respect to the issues concerning the graduation investigation, including, but not limited to, the Board's failure to inform Dr. Williams of the investigation, the Board's failure to provide her with the complete report including all supporting documents, the investigator's failure to interview her, and the Board's unreasonable directive requiring Dr. Williams to respond to the report in a mere six days after providing her with an incomplete copy of the report, all of which are in violation of law and Dr. Williams' authority as the Superintendent of Schools. Accordingly, Dr. Williams has retained the undersigned, at District expense, to advise her with respect to these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley J. Silverstone", written in a cursive style.

Stanley J. Silverstone

cc: Dr. Nicole Williams

# **EXHIBIT G**

*LAW OFFICE OF*  
**STANLEY J. SILVERSTONE**

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10 Esquire Road, Suite 12  
New City, NY 10956  
Tel. (845) 215-9522  
Fax (845) 215-0131  
Email: [sjs@sjsilverstone.com](mailto:sjs@sjsilverstone.com)

November 22, 2017

BY E-MAIL AND U.S. MAIL

Howard Miller, Esq.  
Bond, Schoeneck & King, PLLC  
1010 Franklin Avenue, Suite 200  
Garden City, NY 11530-2900

Re: Dr. Nicole Williams

Dear Howard:

This is a follow-up to my November 18<sup>th</sup> letter, in which I advised that Dr. Williams would provide a list of the information that she requires in order to conduct an appropriate investigation regarding the allegations in the Aldinger report and prepare her response.

In addition to the 27-page Memorandum, the Board provided Dr. Williams with the following documents on November 17, 2017:

- 9 IEP direct documents dated 8/18/17;
- 6 Transcripts generated on 10/2/17;
- 32 "Appeal to Graduate with a Lower Score on a Regents Examination Form" signed on June 23, 2017 by the Assistant Superintendent for Curriculum, Instruction, and Grants Management.

Further, at 6:00 PM on November 21, 2017, the Board Clerk delivered a packet of documents to Dr. Williams from Principal Phee Simpson, which Dr. Williams has not yet reviewed, and, therefore, I am not yet aware of the contents.

As stated in my November 18<sup>th</sup> letter, I remain uncertain whether the Board has provided Dr. Williams with the entire report, as Board member Ray Duncan was quoted in the November 16 Poughkeepsie Journal as stating that the investigation report "is about 200 pages long." Please advise whether the Board has provided Dr. Williams with the full report.

In addition, Dr. Williams initially requires the following additional documents in order to respond to the report:

- All supporting documentation for each student, including, but not limited to, AIS assignments, tutoring, credit recovery assignments, and independent study assignments;
- All questions asked by Mr. Aldinger in his interviews; and
- All notes and transcripts from the interviews conducted by Mr. Aldinger.

As I also stated in my November 18<sup>th</sup> letter, the Board undertook a several months-long secret investigation without bothering to involve the District's chief executive officer. In order for Dr. Williams to properly respond to the report, she must conduct the investigation that she would have conducted had she been properly involved from the beginning. Thus, Dr. Williams requires the following:

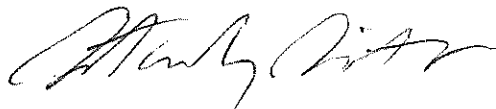
- Full access to Mr. Aldinger, including, but not limited to, in-person meetings as necessary;
- The ability to interview the same witnesses, and other necessary witnesses, in the presence of Mr. Aldinger.

As stated previously, Dr. Williams understands the importance of providing a response to the concerns investigated; however, her position as Superintendent is very different from all other employees in the District and she should have been involved in this process from the beginning. As Superintendent, she will conduct a proper investigation within a reasonable time after she has the information and resources outlined herein.

In summary, in order for Dr. Williams to proceed with her investigation, please (1) confirm that the Board has provided Dr. Williams with the complete report; (2) advise when the Board will provide Dr. Williams with the additional documents requested herein; and (3) advise when the Board will provide Dr. Williams with access to the investigator and witnesses.

Dr. Williams looks forward to the Board's immediate cooperation in remedying its grievous procedural errors in handling this investigation.

Sincerely,



Stanley J. Silverstone

cc: Dr. Nicole Williams

# EXHIBIT H

From: "[BOE] Dr. Felicia Watson" <[fwatson@poughkeepsieschools.org](mailto:fwatson@poughkeepsieschools.org)>  
Date: December 1, 2017 at 8:29:12 AM EST  
To: "Dr. Nicole Williams" <[nwilliam@poughkeepsieschools.org](mailto:nwilliam@poughkeepsieschools.org)>  
Cc: Board Members <[BOE@poughkeepsieschools.org](mailto:BOE@poughkeepsieschools.org)>, Victoria Jackson  
<[vjackson@poughkeepsieschools.org](mailto:vjackson@poughkeepsieschools.org)>, "Miller, Howard" <[millerh@bsk.com](mailto:millerh@bsk.com)>, "Miller, John"  
<[millerj@bsk.com](mailto:millerj@bsk.com)>, Todd Aldinger <[toddaldinger@gmail.com](mailto:toddaldinger@gmail.com)>  
Subject: Graduation Memorandum

Dr. Williams:

It is now over a week past the deadline set by the Board of Education for your response to Special Counsel Todd Aldinger's memorandum regarding Graduation Issues, Preliminary Report to the Board of Education. In that time, your colleagues Dr. Rappleyea, Dr. Ten Dyke, and Ms. Simpson have all responded to this memorandum. Their responses have made it clear that there were serious violations of regulations, procedures and/or law. Based on their responses, the Board has sufficient cause to report these violations to the relevant authorities.

Attorney Aldinger will be preparing said reports to file early next week. If you do not comply with the Board's directive to provide him with a response by 4:00 p.m. on Monday, December 4, 2017 these reports will be filed and released. As this is an ongoing investigation, you are welcome to provide any relevant, evidentiary information to the Board and Attorney Todd Aldinger, as it becomes available to you.

You have received the full report/memorandum. It is 27 pages long, not 200 pages. The erroneous reference to the length of the report by Trustee Raymond Duncan may have been a result of him alluding to the supporting documents not the actual report/memorandum. Those supporting documents have already been provided to you. Also, as the Superintendent of the PCSD, you have access to any other information you may find pertinent to your response, including AIS assignments, tutoring, independent study assignments, and credit recovery assignments. Neither the Board nor Attorney Aldinger needs to provide you with any further documents for you to complete your response as directed.

Lastly, Attorney Aldinger is Special Counsel for the PCSD. He is not your attorney. The attorney-client privilege rests with the Board of Education. You are not entitled to any of his attorney work product in this matter. However, to further aid you in your response, Board Clerk Victoria Jackson can provide you with copies of responses and supporting documents provided by Dr. Rappleyea, Dr. Ten Dyke, and Ms. Simpson.

Dr. Watson

Sent from my iPhone

# EXHIBIT I

**Archived:** Saturday, December 30, 2017 4:56:35 PM

**From:** Dr. Nicole Williams

**Sent:** Saturday, December 02, 2017 8:00:24 AM

**To:** [BOE] Dr. Felicia Watson

**Cc:** Board Members; Victoria Jackson; Miller, Howard; Miller, John; Todd Aldinger; [sjs@sjsilverstone.com](mailto:sjs@sjsilverstone.com)

**Subject:** Re: Graduation Memorandum

**Importance:** Normal

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Dear Dr. Watson:

As stated in my attorney's letters dated November 18 and 22, it is my duty as Superintendent of Schools to conduct an appropriate investigation regarding the allegations in the Aldinger report. Yet you have consistently refused to provide me with the resources necessary to perform this task.

As a matter of prudence and standard procedure, it is necessary for me to consult closely with our district counsel in order to analyze and respond to this report. As Superintendent, my comments are made on behalf of the district, and therefore I must discuss the items in this report with district counsel so that we all have the same understanding of the issues at stake. Thus, I am requesting that Attorney Howard Miller and any other attorney from his firm, who has specialized knowledge of the legal issues associated with the report, meet with me on Monday morning, December 4, 2017. If Mr. Miller is not available at that time, I request an appropriate amount of time after he does meet with me to submit my response.

Further, I require copies of the responses and supporting documents submitted by Dr. Rappleyea and Dr. Ten Dyke (and the submissions of any other witnesses) in advance of my meeting with Attorney Howard Miller.

In addition, I remain unconvinced that you have provided me with the entire report that has been provided to the Board. You state that the reference to the length of the report by Mr. Duncan "may have been a result of him alluding to the supporting documents," which is obviously based only on your speculation of what Mr. Duncan "may have" been alluding to.

Finally, I reserve my right to argue in any appropriate forum that this Board has intentionally and unlawfully impeded my ability to carry out my duties as Superintendent. I reiterate that I intend to conduct a full and proper investigation, but I cannot do so without the Board's cooperation and a reasonable amount of time, considering that Mr. Aldinger took months to complete his investigation (which was incomplete due to his failure to interview all relevant witnesses).

Thank you.

Sincerely,

Dr. Nicole Williams  
Superintendent of Schools  
Poughkeepsie City School District  
(845) 451-4950 (W)  
(845) 391-6221 (C)  
Email: [nwilliam@poughkeepsieschools.org](mailto:nwilliam@poughkeepsieschools.org)

"Every scholar. Every day. Every classroom."

"Excellence is our Goal: Focusing on our Scholars and our Families."



# EXHIBIT J



## **Poughkeepsie City School District**

Delivering on the promise of a high-quality education

*Every scholar. Every day. Every classroom.*

# Memorandum

**To:** Board of Education, Howard Miller, Esq., John Miller, Esq., Todd Aldinger, Esq.

**From:** Dr. Nicole Williams, Superintendent

**Date:** 12/4/2017

**Re:** Inquiry Regarding 2013 Cohort Graduations

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This memorandum is submitted in response to the Legal Memorandum of Mr. Aldinger dated November 14, 2017 (the "Report"), and the directive of Board President Watson sent by email on December 1, 2017, directing me to submit this memorandum by 4:00 PM on December 4, 2017.

### **Background**

Before addressing the Report, it is necessary to place it in proper context. It is clear to me that the hiring of Mr. Aldinger as "special counsel" and his investigation regarding the 2017 graduation is part of the Board majority's intentional and deliberate effort to undermine and usurp my authority as Superintendent and to retaliate against me for filing an appeal to the Commissioner of Education. This effort began with Mr. Aldinger's hiring at the Board's annual Reorganization Meeting on July 7, 2017, and continued with the Board's effort to unlawfully restrict my ability to transfer teachers within the District.

Mr. Aldinger was hired "to perform internal investigations surrounding the 2016 and 2017 elections and any other alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate." One would expect that an individual hired as "special counsel" to a school district would have significant legal experience, including many years of experience in education law. However, that is apparently not the case with Mr. Aldinger. According to the records of the New York Office of

Court Administration (“OCA”), Mr. Aldinger is a first-year attorney who was admitted to the New York Bar on January 11, 2017.<sup>1</sup>

OCA records reflect that Mr. Aldinger practices law at the firm of Ricotta & Visco, a medical malpractice firm in Buffalo, NY. However, an examination of the website of Ricotta & Visco does not show Mr. Aldinger listed as one of the firm attorneys (<https://ricotta-visco.com/attorneys/>). Thus, it appears that his OCA registration data is incorrect. A search of the internet shows that on January 31, 2017, Todd J. Aldinger joined Bouvier Law (<http://bouvierlaw.com/todd-j-aldinger-esq-joins-bouvier-law/>), a Buffalo law firm that does not practice education law. The firm’s announcement of Mr. Aldinger’s employment states that “Todd has a strong background in municipal law, real estate work, corporate practice, contracts and commercial law and also has a keen interest in family law, wills and estates and mental hygiene law.” Thus, at Bouvier Law, Mr. Aldinger neither practices education law, nor has a “keen interest” in it. Finally, it should be noted that the email address that Mr. Aldinger is using as “special counsel” is [toddaldinger@gmail.com](mailto:toddaldinger@gmail.com), which is not a law firm email address. Thus, whether Mr. Aldinger is representing the District through another firm or on his own as a first-year attorney is unknown. If he is practicing law on his own, I question whether the Board asked Mr. Aldinger for evidence of his malpractice insurance coverage.

Mr. Aldinger’s hiring coincided with the Board’s effort to restrict my ability to transfer teachers within the district. On July 14, 2017, the Board took the extraordinary action of adopting Resolution 18-0013, which placed a preemptive moratorium on all teacher transfers in the district for the 2017-18 school year. I immediately advised the Board that Resolution 18-0013 was unlawful, as it violated my statutory duties as Superintendent. On August 28, 2017, I issued a written memorandum to the Board, repeating my position that the moratorium was unlawful, and invoking my authority as the Receiver of Poughkeepsie Middle School to supersede Resolution 18-0013 and to effect the transfer of six teachers. Four of the six teachers complied with my directive to transfer, but the other two teachers refused to comply. The Board chose to support their insubordination over compliance with the law. On September 1, 2017, the Board issued letters to the teachers affected by the August 28 transfers, instructing them that they were “hereby directed by the Board of Education to disregard” my transfer directives.

In order to resolve the Board’s violation of the Education Law with respect to teacher transfers, I retained personal legal counsel pursuant to Section 16 of my Employment Agreement, and my attorney proceeded to file an appeal to the Commissioner of Education on September 28, 2017.

According to Mr. Aldinger’s November 14, 2017 report, he started his investigation in early October, as he states “[i]n early October, I was provided with a file containing information regarding questionable graduations.” (p. 2). Mr. Aldinger then writes that he “proceeded to analyze these documents, research the applicable laws and regulations, confer anonymously with state and federal authorities, and meet with a number of witnesses and whistleblowers.” In other words, it was not until shortly after I filed my appeal to the Commissioner regarding the validity of the Board’s teacher transfer moratorium that Mr. Aldinger began his investigation regarding the 2017 graduation. This raises the question of why his investigation did not start until “early October.” Given Mr. Aldinger’s lack of credentials for his position, his failure to involve me in the investigation, and the temporal proximity of the filing of my appeal to the Commissioner and the start of Mr. Aldinger’s investigation, it is clear that the investigation is, and was intended to be, retaliatory.

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<sup>1</sup> The New York attorney directory is located at <http://iapps.courts.state.ny.us/attorney/AttorneySearch>.

On November 17, 2017, the Board directed me to respond to “each and every concern” raised in the Aldinger report by the close of business on November 21, 2017. In other words, I was given four days to respond to a 27-page report. On November 18, 2017, my attorney responded on my behalf that the Board’s directive was made in bad faith and was both improper and unreasonable, and stated that I needed additional information and a reasonable amount of time in order to respond. On November 22, 2017, my attorney followed up with a letter specifying the information that I would need in order to respond, including all notes and transcripts from the interviews conducted by Mr. Aldinger. The Board has refused to provide me with the information that I requested.

### **Response to Report**

First and foremost, the Board is to be reminded that I am the Superintendent and Chief Executive Officer of this District. Therefore, it is not my intention to “respond” to the Report as if I myself were the subject of some investigation, but to: (i) issue my own preliminary analysis of the underlying matters after consulting with all relevant staff members who have knowledge of the issues regarding the 2013 cohort graduation; (ii) order all further actions as I deem necessary to reach appropriate conclusions about the serious questions raised regarding the 2013 cohort graduation; and (iii) state my position about the process followed in this investigation and of the conclusions reached in the Report.

The Board is also reminded that, pursuant to Education Law Section 2508(2) & (6), I have the inherent, non-delegable authority “to enforce all provisions of law and all rules and regulations relating to the management of the schools” and “to have supervision and direction over the enforcement and observance of the courses of study, *the examination and promotion of pupils*, and over all other . . . educational activities” [emphasis added]. And although this authority is to be exercised under the management, direction and control of this Board, the law required my input and management of the investigation.

Nonetheless, the Board chose to conduct the investigation in violation of the Education Law and my authority as Superintendent, without my knowledge or involvement, and we are now in the unfortunate position of needing a second full investigation into this matter, one which I direct and in which I have full access to our legal counsel as well as to all documents and witnesses I deem to be necessary or appropriate.

Let me be very clear that I believe that this entire investigation and Report was not a truth-finding mission at all, but a thinly-veiled attempt to entrap and retaliate against me. I fully intend to pursue all of my legal rights with respect to violations of my authority and all other inappropriate actions of this Board as will be highlighted below. As part of the exercise of my legal rights as Superintendent, I have instructed my personal counsel to file an appeal to the Commissioner of Education to obtain a ruling on the validity of the conduct of the Board’s investigation.

However, more importantly, the issues that have presented themselves must be addressed correctly. Therefore, I will be doing a student-by-student inquiry into the graduation records in question and I will be doing so with the assistance of district counsel and access to all relevant witnesses and documents.

To that end, I am hereby requesting that the Board direct Mr. Miller, our district counsel, to draft a summary of the legal issues discussed in this Report and have it delivered to me by no later than

December 9, 2017 at 5:00 p.m. I am also directing all staff members with knowledge of these issues, including Ms. Simpson, Ms. Lovinsky, and Dr. Rappleyea, to report to my office on Tuesday, December 5<sup>th</sup> at 9:00 a.m. so that interviews can be arranged.<sup>2</sup> I require Mr. Miller or a designated attorney from his firm to be present on Tuesday, December 5<sup>th</sup> at 9:00 a.m. and at all interviews to be conducted. Finally, I request the names of every person interviewed,<sup>3</sup> copies of the notes from such interviews and every document reviewed by Mr. Aldinger and/or the Board in the course of this investigation to be delivered to my office by Tuesday, December 5<sup>th</sup> at 9:00 a.m. Failure to deliver all such documents will be deemed to be per se bad faith on the part of this Board by obstructing a proper investigation.

Finally, I am respectfully requesting responses from the Board to the questions posed below by December 9, 2017 at 5:00 p.m.

(i) *Initial Inquiries*

Mr. Aldinger starts the Report by stating that, at the September 6<sup>th</sup> meeting, Dr. Watson “raised questions regarding information that she had recently received regarding Section 504 Safety Net accommodations that were granted in extremely close proximity to students’ exams in June and August 2017” and that “Board Vice-President Doreen Clifford raised additional questions about Appeals to Graduate with a Lower Score on a Regents Examination.” (Report at 1). I was not made aware of allegations of any irregularities in this regard and should have been *the very first person to whom they were reported*. The names of the individuals who raised these concerns to Dr. Watson and Ms. Clifford must be provided to me by December 9, 2017 so that they may be interviewed.

The Report goes on to state that “by a consensus of a majority of the Board,” Dr. Watson contacted Mr. Aldinger to instruct him to begin his “inquiry.” I hereby request responses to the following: (i) Was there a formal vote to begin the “inquiry”? If so, provide a copy of the Resolution by December 9<sup>th</sup> at 5:00, and if not, provide the names of the Board members who made up this “consensus”; (ii) Was there a formal vote regarding payment to Mr. Aldinger for this investigation? If so, provide a copy of the applicable Resolution by December 9<sup>th</sup> at 5:00.

(ii) *Legal and Factual Inquiry*

On pages 1-3, the Report describes the Section 504 process and “Safety Net Accommodations.” Because the Board has denied me contact with Mr. Aldinger, Mr. Miller should summarize the law applicable to Section 504 procedures and accommodations including the “low pass option” as well as the connection between these accommodations and the requirement to provide a free and appropriate public education as part of his report due on December 9<sup>th</sup>.

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<sup>2</sup> Note that I intend to interview Ms. Simpson, the principal of the school in question, and Ms. Lovinsky, who was quoted throughout the Report. Despite the essential connection of both these individuals to the matter under investigation, neither of them was interviewed by Mr. Aldinger. An appropriate investigation requires their input *before* a conclusion is reached.

<sup>3</sup> There should be no distinction made over anyone designated in the Report as a whistleblower. As the Chief Executive Officer of this District, I am the primary officer to whom any confidential allegations of misconduct should be directed.

On pages 8-9 of the report, Mr. Aldinger lists his conclusions about the appropriateness of the Section 504 meetings held on August 15, 2017. He states that there were “potential violations of 34 CFR 104.35(c), which requires PCSD ‘ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.’” Once again, I was unaware of the underlying facts on which Mr. Aldinger bases his conclusions and should have been immediately briefed by this Board and counsel about the concerns at issue. I will conduct the appropriate factual inquiry. Mr. Miller should include an analysis of this Regulation in his report, including discussion of the level of understanding of the law itself required of members of the 504 Committee. Finally, Mr. Miller should summarize the Regulations related to appeals to graduate with lower Regents scores.

Once I have conducted a full factual interview, I will discuss with Mr. Miller how the facts of this matter apply to the applicable law and Regulations summarized in his report. At that point, I will take any and all corrective actions necessary. If necessary, I will arrange for a meeting with the New York State Education Department (NYSED) and the Board of Cooperative Educational Services (BOCES) to gain their perspective, implement any changes that may be necessary and deal appropriately with staff in terms of training and/or remediation.

*(iii) Analysis of the Intent of the Report*

It is beyond question in my mind that the investigation and Report were conducted in bad faith, in that the investigation was conducted for an improper and dishonest purpose, namely, to entrap, harm, harass, humiliate and retaliate against me, instead of conducting an objective investigation to determine the truth regarding the 2013 cohort graduation. While I wholeheartedly agree that any violations of graduation protocols must be fully investigated and that absolute compliance with law in every case must be adhered to, the method by which this investigation was conducted and the way that the report is written lead to the inescapable conclusion that this Board is simply attempting to harm, discredit, and retaliate against me. If that were not the case, then why was I, the Superintendent, not made aware of the investigation until after it was completed? Why was I not interviewed as part of the inquiry? I am perplexed why the Board proceeded with its investigation without my knowledge, advice, participation or support.

Furthermore, the Report itself reads more like a legal brief than an objective finding of facts. For example, Mr. Aldinger states “reducing the required grade needed on exams to graduate, after the fact . . . can only be interpreted as a means to graduate these students, by whatever means possible” (p. 5) and “if students were given Section 504 Plans at the end of their academic careers just so they could graduate, that would be clearly inappropriate; however, it is arguably worse if these students actually had disabilities qualifying them under Section 504. Only instituting a Section 504 Plan at the very end of a truly disabled, Section 504-qualifying student’s academic career means that this student was deprived of receiving the benefits of Section 504 Plan accommodations during the vast majority of his/her academic career. This violates [applicable] regulations. . . .” This sort of rhetoric demonstrates that the purpose of the investigation was to reach a predetermined conclusion. It appears that Mr. Aldinger was hired not to conduct an inquiry but to reach a specific conclusion “by whatever means possible.”

In the section regarding appeals to graduate with lower scores on Regents examinations, Mr. Aldinger states that “once an appeal is initiated, state regulations require the school principal to ‘chair a standing

committee . . . ’” related to the appeal and that the principal must be included on the committee (pgs. 19-20). He also states that “it is important to note that these regulations require the Superintendent (not the Superintendent’s designee) to sign-off on all appeals” (p. 20). Mr. Aldinger later states that certain appeals in question were signed-off upon by Assistant Superintendent Farrell and not myself and that Assistant Superintendent Farrell “was under the impression” that I would then sign-off on the appeals (p. 21). In essence, the Report is saying that, under the applicable legal procedures, Ms. Simpson and I were indispensable parties. Yet neither of us was interviewed or made aware of the investigation until after the Report was issued. This fact makes it obvious that the Report is invalid and was motivated by bad faith, in that the investigation and Report were motivated by an improper and dishonest purpose, namely, to entrap, harm, harass, humiliate and retaliate against me, instead of conducting an objective investigation to determine the truth regarding the 2013 cohort graduation. A proper, objective investigation would have included interviews of all indispensable parties and witnesses.

Let me be very clear once again that I, as Superintendent, take the issue of graduation compliance very seriously and will conduct a full investigation with assistance of counsel and access to all parties and records. If it turns out there were any improper graduations of the 2013 cohort, I will address the matter appropriately. However, I will not tolerate the conduct of a quasi-investigation that appears to have been motivated by improper purposes and contaminated by the Board’s desire to harm myself and my administration. By the entire procedure followed, the decisions about who to inform and who not to inform and the amateurish and accusatory tone of the Report itself, it is clear that the Board has not done a proper investigation of the issue, so I will.

It is also clear to me that your intent is to distribute these one-sided findings, which were reached without my participation or knowledge, to the public in order to cause me harm. This is disgraceful conduct. The Board’s objective should be to conduct a fair inquiry and do what is best for the students of our District, not to conduct an investigation that violates the Education Law and my authority as Superintendent. I will exercise all of my legal recourse to make sure that, in the end, the findings of this investigation are reached fairly and objectively and that any necessary remediation will take place.

I respectfully expect and request your full cooperation in my investigation. My intent is to move forward in the best interests of the students and taxpayers of our community.

# EXHIBIT K



From: "[BOE] Dr. Felicia Watson" <[fwatson@poughkeepsieschools.org](mailto:fwatson@poughkeepsieschools.org)>  
Date: December 7, 2017 at 8:16:25 AM EST  
To: "Dr. Nicole Williams" <[nwilliam@poughkeepsieschools.org](mailto:nwilliam@poughkeepsieschools.org)>  
Cc: Board Members <[BOE@poughkeepsieschools.org](mailto:BOE@poughkeepsieschools.org)>, Todd Aldinger <[toddaldinger@gmail.com](mailto:toddaldinger@gmail.com)>, "Miller, Howard" <[millerh@bsk.com](mailto:millerh@bsk.com)>, "Miller, John" <[millerj@bsk.com](mailto:millerj@bsk.com)>, Becky Torres <[btorres@poughkeepsieschools.org](mailto:btorres@poughkeepsieschools.org)>, Victoria Jackson <[vjackson@poughkeepsieschools.org](mailto:vjackson@poughkeepsieschools.org)>  
Subject: Ongoing Investigation Regarding 2013 Graduation Cohort

The Board is in receipt of your email letters dated December 2, 2017 at 8:00 am and December 4, 2017 at 3:58 pm regarding the ongoing investigation of alleged violations of Education Law(s) and Commissioner's regulations in the effectuation of diplomas' granted in 2017. This investigation began after questions were raised during a presentation you directed Dr. Ten Dyke to give to the Board of Education at a public board meeting on September 6, 2017. As you are aware, this presentation promoted and detailed the school district's sharp increase in graduation rates over recent years. When the presentation was seen on BoardDocs for the September 6, 2017 meeting, a whistleblower became concerned that information seen in Dr. Ten Dyke's presentation was questionable.

The preliminary findings of this investigation were presented by Mr. Aldinger to the total Board in an Executive Session on November 15, 2017 which your presence, as the Superintendent of Schools was required and expected. The Board received a message at approximately 6:00 p.m. (Executive Session began at 5:30 pm) that you would not be attending Executive Session nor the Board meeting. Regardless, prior to that meeting you were provided with a full copy of the report on November 15, 2017 at 8:06 am. During this Executive Session, which you failed to attend, this preliminary written investigation report was thoroughly discussed and the underlying evidence upon which it was founded was shared with all Board members by Special Counsel, Todd Aldinger, Esq. You have subsequently received copies of all of this underlying evidence. By providing you with the full report within 24 hours of it being provided to school board members the Board has operated in full compliance and in good faith with paragraph 3(b) of your employment contract.

The Board and Special Counsel promptly, confidentially and discretely provided you with a full copy of this report, which alleges serious criticisms of your specific duty performance in violation of Education Law, Commissioner's regulations, and District Policy as the Superintendent of Schools. This action clearly satisfied the requirement of the Board in your employment contract. At this public meeting, the Board intentionally and legally shielded these alleged violations from the general public and media as it awaited your factual response to these allegations that you may have failed in the duties required by you under law, regulation and District policy.

On December 1, 2017 at 8:29 am, via email, the Board of Education directed you to respond with facts to the alleged violations cited in the preliminary investigation before the report final findings were to be submitted to the New York State Education

Department and other entities as required by law for their consideration, investigation and or guidance to the Board.

The Board has and will continue to give you as the Superintendent of Schools and relevant district personnel the opportunity to factually respond to any and all of the allegations in this serious report. However, as you are aware from reading the investigation report at the same instance the board received it that there are alleged violations of law that implicates you as the Superintendent of Schools and other district administrators. As such, this investigation must clearly be completed at the direction of the Board of Education to its Special Counsel and ultimately for its consideration to the New York State Education Department.

The Board of Education has provided any and all evidence to you and will not adhere to any other demands in your December 4, 2017 letter. Furthermore, the Board declines to have you meet with general counsel because they did not perform this investigation; nor, would the board expect them to be specifically familiar with any of the evidence provided in this investigation to you and the board. The Board has given you ample opportunity to study and submit contradictory facts to the allegation in this report. All Administrators that were solicited for facts in this matter have and continue to supply their documents without any delay. Your response letter regarding this investigation dated December 4, 2017 in this matter is duly noted.

Again, I remind you that it is illogical for you as superintendent to have been brought in to lead this investigation. This investigation directly implicates you by alleging egregious violations of law, regulation and district policy. Further it would be inappropriate for you as the Superintendent of Schools to interfere, obstruct, and or intimidate district personnel under the guise of performing your own investigation in this matter.

This Report is, as stated in its own title, a preliminary report. It is not a final report and no other reports have been made to any authorities or made public at this time. Special Counsel Aldinger has always planned to interview you, Ms. Simpson, and Ms. Lovinsky at an appropriate time, after you had been given the opportunity to address his report in writing. However, you have continued to delay in providing a comprehensive written response. Therefore, to avoid further delay, it appears to be necessary to schedule a recorded interview with Mr. Aldinger at this time. He has advised that he is available to conduct such an interview on December 15, 2017, beginning at 10:00 am.

We hope that during your interview you are able to explain and provide evidence as to how the allegations do not indicate any wrongdoing. However, these allegations directly and personally involve you and your duties as Superintendent, and, therefore, there is a possibility that the conclusion of this investigation may expose you to disciplinary actions by the Board. As such, it is advised that you may be entitled to have counsel present at this interview. Please note however, that any such counsel would not fall under Section 16 of your employment contract and will not be paid for by the District.

Dr. Watson

Sent from my iPhone

# EXHIBIT L

*LAW OFFICE OF*  
**STANLEY J. SILVERSTONE**

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10 Esquire Road, Suite 12  
New City, NY 10956  
Tel. (845) 215-9522  
Fax (845) 215-0131  
Email: [sjs@sjsilverstone.com](mailto:sjs@sjsilverstone.com)

December 13, 2017

BY E-MAIL AND U.S. MAIL

Howard Miller, Esq.  
Bond, Schoeneck & King, PLLC  
1010 Franklin Avenue, Suite 200  
Garden City, NY 11530-2900

Re: Dr. Nicole Williams

Dear Howard:

My client is in receipt of Dr. Watson's e-mail dated December 7, 2017, with the subject line "Ongoing Investigation Regarding 2013 Graduation Cohort." Although the e-mail is dated December 7<sup>th</sup>, Dr. Williams did not receive it until the Board Clerk delivered it to her on December 12.

Dr. Watson's e-mail says that Mr. Aldinger's Report is "preliminary" and that Mr. Aldinger "has always planned to interview [Dr. Williams], Ms. Simpson, and Ms. Lovinsky at an appropriate time." This begs the question of why he wrote an entire report before doing so, but regardless of that, it entirely misses the point. The investigation and its findings are out of order and voidable irrespective of what happens next. As Superintendent, Dr. Williams should have been briefed as to the issues as soon as they arose; she should also have been involved in strategic planning with advice of counsel from the very outset and advised of how best to conduct the investigation. As chief executive officer of this District, Dr. Williams was legally entitled to no less. To give her an opportunity to "respond" now that the investigation has run the majority of its course is too little too late and does not remedy the essential defects in the procedures followed by this Board and Mr. Aldinger. This was set up as a retaliatory "got you" type trap from the beginning and no smoothing over will hide that fact now.

To that point, Dr. Watson's e-mail states that it is "illogical" for my client, as Superintendent, "to have been brought in to lead this investigation" because the investigation "directly implicates [her] by alleging egregious violations of law, regulation and district policy." This statement is outrageous. The Board did not know, and could not have known, whether the investigation would

“implicate” my client in any violations of law, regulation or district policy before the investigation began, so involving the Superintendent at that time could not have been “illogical” *unless* the purpose of the investigation from the beginning was to implicate my client by any means possible, which I strongly suspect to have been the case.

Dr. Watson’s e-mail states that “it would be inappropriate for [Dr. Williams] to interfere, obstruct, and or intimidate district personnel under the guise of performing your own investigation in this matter.” Once again, the phrasing of that statement makes it clear that the Board has decided on a predetermined outcome and is trying to find a way to reach it. I assure you that Dr. Williams has no intent to interfere, obstruct, and or intimidate anyone. Quite the opposite, she is conducting a legitimate, balanced investigation of the matter aimed at determining what, if any, irregularities occurred, how they are to be corrected and what, if any, action needs to be taken to remedy the situation. As a preliminary matter, Dr. Williams spoke to the District Superintendent already, and will be interviewing Ms. Simpson, Ms. Lovinsky, Ms. Palmer (all scheduled for December 18), Dr. Rappleyea, Dr. Ten Dyke and Ms. Farrell. My client reserves the right to interview other individuals as the need may arise. Dr. Williams also intends to contact NYSED during, and certainly at the end of, the process to discuss questions and conclusions. Dr. Williams expects the cooperation and support of this Board, including access to counsel, as part of this process.

Dr. Watson’s e-mail also says that the Board of Education has provided any and all evidence to Dr. Williams. This is false and misleading. As stated above, Dr. Williams was and remains entitled to be part of the investigatory process, with access to district counsel, from the inception. Her position and her contract demand that she be made aware of concerns such as this one and discuss the options for conducting an investigation with full assistance of counsel. This was not done. Instead, the Board has piled selected documents on her at the end of the investigation without allowing her access to District counsel for assistance. This is a mere charade. Dr. Williams has the obligation and right to understand all the issues and be involved in the investigatory process from the outset. Yet the Board has explicitly and intentionally cut off her ability to seek legal guidance from a District-sanctioned attorney throughout this process. My client will conduct her investigation to the best of her ability, as she deems to be her obligation, and I have advised her to present her findings, along with a summary of the Aldinger investigation’s procedural defects, to each authority to whom the Aldinger report is presented.

For the sake of the taxpayers and students of this District, the Board must immediately reverse its course and provide Dr. Williams with full assistance of counsel immediately. If Mr. Aldinger is designated to assist Dr. Williams in this matter, he cannot also conduct the upcoming interview of her, which Dr. Watson’s e-mail described as potentially disciplinary in nature. That would obviously place Mr. Aldinger in an unethical conflict of interest.

As for said interview, I am available on either December 20 or 21. Please ask Mr. Aldinger to schedule the interview on one of those days in order to accommodate my schedule. Dr. Williams will answer any questions to the best of her knowledge. However, please note that her responses will be severely limited by the fact that she is still in the process of doing her own assessment of the allegations.

Finally, in several places, Dr. Watson's e-mail claims that the Board has complied with Dr. Williams' contract. I disagree. For example, providing Dr. Williams with the Aldinger Report "within 24 hours of it being provided to school board members" by no means complies with Paragraph 3(b) of the Contract. That Paragraph requires that notice be provided within one school day of any "criticism, complaint or suggestion." The time when this one school day period commenced was at the inception of the allegations, not at the end of the process after Mr. Aldinger had issued his report. Paragraph 3(b) also requires the Board to give direction to the Superintendent as to management of the District and solutions to specific problems and prohibits the Board from micromanagement. It would be difficult to imagine a more flagrant breach of this provision than the Board has committed by usurping Dr. Williams' authority with respect to this investigation and this letter will serve as notice of my client's claim therefor.

As stated in my November 18<sup>th</sup> letter, and contrary to Dr. Watson's e-mail, it is Dr. Williams' position that Section 16 of her Employment Agreement applies to all of the above issues concerning the graduation investigation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stanley J. Silverstone".

Stanley J. Silverstone

cc: Dr. Nicole Williams

# **EXHIBIT M**

From: "[BOE] Dr. Felicia Watson" <[fwatson@poughkeepsieschools.org](mailto:fwatson@poughkeepsieschools.org)>  
Date: December 15, 2017 at 11:44:06 AM EST  
To: "Dr. Nicole Williams" <[nwilliam@poughkeepsieschools.org](mailto:nwilliam@poughkeepsieschools.org)>  
Cc: Howard Miller <[hmill@bsk.com](mailto:hmill@bsk.com)>, [jmill@bsk.com](mailto:jmill@bsk.com), Todd Aldinger <[toddaldinger@gmail.com](mailto:toddaldinger@gmail.com)>, Victoria Jackson <[vjackson@poughkeepsieschools.org](mailto:vjackson@poughkeepsieschools.org)>  
Subject: Re: Follow-up date correction

Dr. Williams:

The Board has informed you on December 7, 2017 at 8:16 a.m. that you have been egregiously implicated in the dereliction of your duties in your employment role as Superintendent of Schools. The Board has clearly explained that it is inappropriate and illogical for you to proceed with any "internal investigation" or interviews of any personnel employed by the Poughkeepsie City School District.

The continuous provision by you of any and all evidentiary information regarding your specific dereliction of your duties as Superintendent of Schools as identified in the investigation memorandum provided to you by Special Counsel Todd Aldinger is welcomed and will hopefully contradict evidence shown in the ongoing memorandum/report.

As previously stated to you in the December 7, 2017 email letter, the Board directs you not to attempt to hold an "internal investigation" of district personnel to gain collaboration, interfere with, intimidate and obstruct possible district personnel in this serious ongoing investigation that may be ultimately investigated by the New York State Education Department and potentially other authorities.

Your meeting with Special Counsel Aldinger on December 21, 2017 at 10:00 a.m. is confirmed and duly noted.

Dr. Watson



# EXHIBIT N

LAW OFFICE OF  
STANLEY J. SILVERSTONE

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10 Esquire Road, Suite 12  
New City, NY 10956  
Tel. (845) 215-9522  
Fax (845) 215-0131  
Email: [sjs@sjsilverstone.com](mailto:sjs@sjsilverstone.com)

December 16, 2017

BY E-MAIL AND U.S. MAIL

Howard Miller, Esq.  
Bond, Schoeneck & King, PLLC  
1010 Franklin Avenue, Suite 200  
Garden City, NY 11530-2900

Re: Dr. Nicole Williams

Dear Howard:

This is in response to Dr. Watson's e-mail to Dr. Williams dated December 15, 2017, which continues to show that the Board is engaging in a sham, retaliatory investigation.

Dr. Watson begins by stating that "[t]he Board has informed you on December 7, 2017 at 8:16 a.m. that you have been egregiously implicated in the dereliction of your duties in your employment role as Superintendent of Schools." First, as stated in my December 13 letter to you, Dr. Williams did not receive Dr. Watson's December 7 email until the Board Clerk delivered a hard copy of it to her on December 12. Second, please explain how the Board reached its conclusion that Dr. Williams has been derelict in her duties before her interview with Mr. Aldinger on December 21<sup>st</sup>. What is the point of the December 21 interview if the Board has already reached its pre-determined conclusion? Third, pursuant to Section 3(b) of Dr. Williams' Employment Agreement, please provide the details of the specific duties that the Board claims Dr. Williams has been "derelict" in performing and how she has been derelict in the performance of such duties.

Dr. Watson then states that "[t]he Board has clearly explained that it is inappropriate and illogical for you to proceed with any 'internal investigation' or interviews of any personnel employed by the Poughkeepsie City School District." I disagree. Not only is it appropriate and logical, but the Superintendent is required by law to conduct an investigation into the allegations regarding compliance with the 2013 cohort graduation requirements. Education Law Section 2508(2) & (6) requires the Superintendent "to enforce all provisions of law and all rules and regulations relating to the management of the schools" and "to have supervision and direction over the enforcement and observance of the courses of study, *the examination and promotion of pupils*, and over all other . . .

educational activities” [emphasis added]. Although this authority is to be exercised under the management, direction and control of the Board, the law requires Dr. Williams’ input and management of the investigation.

However, since the Board is now prohibiting Dr. Williams from conducting an investigation pursuant to her statutory duties, she has postponed the meetings that she had scheduled with Ms. Simpson, Ms. Lovinsky, and Ms. Palmer for December 18.

With respect to Dr. Watson’s repeated claim that it is “illogical” for Dr. Williams to proceed with an investigation, I note that Dr. Watson made this same claim in her December 7 email, when she said that it is illogical for Dr. Williams “to have been brought in to lead this investigation” because “[t]his investigation directly implicates you by alleging egregious violations of law, regulation and district policy.” However, as I stated in my December 13 letter to you, the Board did not know, and could not have known, whether the investigation would “implicate” Dr. Williams in any violations of law, regulation or district policy before the investigation began, so involving the Superintendent at that time could not have been “illogical” *unless* the purpose of the investigation from the beginning was to implicate my client by any means possible. All signs point to the inescapable fact that the purpose of Mr. Aldinger’s investigation is to support the conclusions that the Board reached before the investigation began. In other words, the investigation is a sham.

Dr. Watson’s December 15 email also states that “[t]he continuous provision by you of any and all evidentiary information regarding your specific dereliction of your duties as Superintendent of Schools as identified in the investigation memorandum provided to you by Special Counsel Todd Aldinger is welcomed....” However, I note that Mr. Aldinger’s report does not identify Dr. Williams’ alleged “specific dereliction of duties as Superintendent of Schools.” How can Dr. Williams know what “evidentiary information” she needs to submit if she does not know what the alleged “specific dereliction” is meant to include? It appears that Dr. Watson’s education is lacking in the principles of due process.

Dr. Watson’s December 15 email also directs Dr. Williams not to “interfere with, intimidate and obstruct possible district personnel.” However, there is absolutely no evidence that Dr. Williams has interfered with, intimidated or obstructed anyone, or that she intends to. As you know, in my December 13 letter to you, I stated as follows:

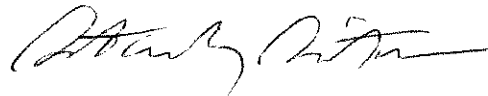
I assure you that Dr. Williams has no intent to interfere, obstruct, and or intimidate anyone. Quite the opposite, she is conducting a legitimate, balanced investigation of the matter aimed at determining what, if any, irregularities occurred, how they are to be corrected and what, if any, action needs to be taken to remedy the situation.

Only the Board is guilty of interference, intimidation and obstruction, with respect to the Superintendent’s statutory duties and contractual rights.

Despite the fact that the Board has already reached its pre-determined conclusions in a sham, retaliatory investigation, I will attend with Dr. Williams at the interview by Mr. Aldinger on December 21, 2017 at 10:00 a.m. Please note that Dr. Williams will be taking a one-half day personal day on that afternoon, so please advise whether Mr. Aldinger expects the interview to last more than two hours. If so, we can start earlier than 10:00 a.m.

Further, to ensure maximum privacy and confidentiality, Dr. Williams requests that the interview be held at the offices of the Dutchess County Board of Cooperative Educational Services (BOCES), in Poughkeepsie. If acceptable, Dr. Williams will make the necessary arrangements with BOCES and will advise the Board of the location.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley J. Silverstone", written in a cursive style.

Stanley J. Silverstone

cc: Dr. Nicole Williams

# EXHIBIT O

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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In the Matter of the Claim of:

NICOLE WILLIAMS,

**NOTICE OF CLAIM**

Claimant,

v.

BOARD OF EDUCATION OF THE  
POUGHKEEPSIE CITY SCHOOL  
DISTRICT, and the POUGHKEEPSIE  
CITY SCHOOL DISTRICT,

Respondents.

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**PLEASE TAKE NOTICE**, that Claimant, Dr. Nicole Williams, by her undersigned attorney, hereby makes a claim and demand against the Board of Education of the Poughkeepsie City School District and the Poughkeepsie City School District, as follows:

1. This notice is submitted pursuant to Section 3813 of the New York Education Law.

2. Claimant, Dr. Nicole Williams, is the Superintendent of Schools of the Respondent, Poughkeepsie City School District (the "District"). Claimant's post-office address is Poughkeepsie City School District, 11 College Avenue, Poughkeepsie, NY 12603.

3. Respondent, Board of Education of the Poughkeepsie City School District (the "Board"), is a corporate body that governs the District pursuant to the New York Education Law.

paragraph and fees charged by such legal counsel must be customary and reasonable within the geographic area of the school district. The legal counsel retained by the Superintendent shall be compensated for services in the same manner and in accordance with the same procedures as the DISTRICT compensates other legal counsel. The legal counsel retained by the Superintendent, shall serve at the pleasure of the Superintendent. Under no circumstance shall the SUPERINTENDENT be authorized to use this sum of money to retain counsel relating to her own personal legal representation regarding her employment status. Nothing in this article shall limit the responsibility of the BOARD to indemnify and potentially provide counsel to the SUPERINTENDENT pursuant to the indemnification provisions of Article 25.

8. On July 14, 2017, the Board adopted Resolution 18-0013, placing a preemptive moratorium on all teacher transfers in the district for the 2017-18 school year.

9. Claimant advised the Board in several written and verbal communications that Resolution 18-0013 violated the New York Education Law and her authority as the Superintendent of Schools.

10. The Claimant believed and continues to believe that this restriction violated the Education Law and her authority as Superintendent. Therefore, by letter dated September 11, 2017, Claimant's undersigned counsel informed the Board that he had been retained by Dr. Williams pursuant to Section 16 of the Agreement to advise her on the legality of Board Resolution 18-0013. The September 11<sup>th</sup> letter states that "Dr. Williams believes that the Board's moratorium is in derogation of law and violates her authority as the Superintendent of Schools and as the receiver of the Poughkeepsie Middle School."

subsequent actions by the Board advising staff members to disregard one of Claimant's directives also violated the New York State Education Law and her authority as Superintendent. Therefore, the appeal is clearly covered by Section 16 of the Agreement.

15. On October 2, 2017, Claimant's counsel submitted his initial statement to the District for legal services rendered to the Claimant pursuant to Section 16 of the Agreement. It is beyond dispute that the Claimant "believes that the Board [was] acting in derivation of law or a manner which violates her authority as the Superintendent of Schools," in the dispute over Resolution 18-0013, yet the District has failed to pay this statement.

16. The District's failure to pay Claimant's legal fees incurred pursuant to Section 16 of the Agreement violates Section 16.

17. In opposition to Claimant's appeal to the Commissioner of Education, Board President Watson asserted that Section 16 is "*ultra vires*, and as such unlawful." However, the Board cited no authority to support this proposition.

## **II. Breach of Section 3(b)**

18. Section 3(b) of the Agreement provides as follows:

The BOARD and/or individual Board members will promptly, confidentially and discretely refer to the SUPERINTENDENT in writing any criticism, complaint or suggestion within one school day for her study and recommendation regarding the administration of the DISTRICT or the SUPERINTENDENT's performance of her duties. In addition, individual BOARD members shall not give direction to the SUPERINTENDENT or any DISTRICT employee regarding the management of the DISTRICT or the solution of specific problems. Only



to the Claimant in a public meeting with the intent and/or effect of publicly criticizing the Claimant was neither confidential nor discrete.

### **III. Harassment, Interference with Contract, and Intentional Infliction of Emotional Distress**

24. On September 6, 2017, the Board raised questions regarding compliance with graduation requirements within the District.

25. The Board hired Todd J. Aldinger, who, upon information and belief is a first-year attorney with no experience in education law, to conduct an investigation into the matter.

26. In early October 2017, Attorney Aldinger commenced his investigation.

27. On or about November 15, 2017, Mr. Aldinger produced a twenty-seven (27) page Memorandum outlining his findings. The Board provided a copy of the Memorandum to Dr. Williams on November 15, 2017.

28. However, the Board did not provide Claimant with a complete copy of Mr. Aldinger's report. According to Board member Ray Duncan, quoted in the November 16 Poughkeepsie Journal, the investigation report "is about 200 pages long."<sup>1</sup> Thus, Dr. Williams has been provided with only a tiny percentage of the complete report.

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<sup>1</sup> <http://www.poughkeepsiejournal.com/story/news/education/2017/11/16/lawyer-can-share-poughkeepsie-graduation-probe-findings/869304001/>

page Memorandum on the Claimant and giving her four (4) days to prepare a complete response, the Board was clearly acting in bad faith and creating a situation intended to entrap, harm, harass and humiliate the Claimant, and to interfere with her contractual rights.

#### **IV. Retaliation**

35. As stated above, on September 28, 2017, Claimant filed an appeal to the Commissioner of Education pursuant to Section 310 of the Education Law in order to obtain an order declaring Resolution 18-0013 (the teacher transfer moratorium) null and void *ab initio*, and for other relief.

36. As stated above, in early October 2017, Attorney Aldinger commenced his investigation regarding compliance with graduation requirements within the District.

37. The temporal proximity of the filing of Claimant's appeal to the Commissioner and the start of Mr. Aldinger's investigation demonstrates that the investigation is, and was intended to be, in retaliation for the filing of Claimant's appeal to the Commissioner and in retaliation for Claimant's exercise of her rights as Superintendent and Receiver of Poughkeepsie Middle School with respect to the transfer of teachers within the District.

TO: Dr. Felicia Watson, President  
Board of Education of the Poughkeepsie City School District  
11 College Avenue  
Poughkeepsie, NY 12603

Victoria L. Jackson, District Clerk  
Poughkeepsie City School District  
11 College Avenue  
Poughkeepsie, NY 12603

# **EXHIBIT P**



## Poughkeepsie City School District

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December 20, 2017

Mr. Roy F. Tario  
Professional Conduct Investigator  
New York State Education Department  
Office of School Personnel Review and Accountability/Test Security Unit  
89 Washington Avenue, Room 981 EBA  
Albany, NY 12234

Re: *Poughkeepsie City School District*

Dear Mr. Tario:

I am writing to request the Department's guidance with respect to the investigation currently being conducted by the Board of Education of the Poughkeepsie City School District into the District's compliance with the 2013 cohort graduation requirements. I have clearly and repeatedly expressed my intent to conduct my own investigation. However, the Board has directed me not to conduct an investigation, has denied me all of the resources necessary to investigate, and has denied me access to District legal counsel. The Department's intervention is required because the Board's investigation is so riddled with procedural and substantive flaws that an objective, constructive and fair result is impossible. The flaws in the Board's investigation include and involve the following:

1. The Board conducted its investigation in secret without involving me. The Board commenced its investigation at least as early as the beginning of September 2017, or possibly earlier, but did not notify me of the investigation until providing me with a report of the findings of Special Counsel Todd Aldinger on November 15, 2017.<sup>1</sup>

2. The Board's secret investigation commenced at the same time that a dispute arose between myself and the Board regarding the validity of the Board's July 14, 2017 teacher transfer moratorium, a dispute that resulted in my filing of an appeal to the Commissioner of Education on September 28, 2017. I believe the Board's motive for this investigation is retaliation.

3. On November 17, 2017, after secretly conducting its investigation for more than two months, the Board unreasonably directed me to respond to "each and every concern" raised in the 27-page Aldinger report in a mere four days.

4. Special Counsel prepared two reports without interviewing, or even asking to interview, the High School Principal, the High School Assistant Principal, or me.

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<sup>1</sup> According to the records of the New York Office of Court Administration ("OCA"), Mr. Aldinger is a first-year attorney who was admitted to the New York Bar on January 11, 2017, and practices as a solo practitioner.

5. As soon as I received the November 15 Aldinger report, I repeatedly advised the Board that it was my duty to conduct an appropriate investigation into the issues raised in the report, and requested the Board's cooperation in providing me with necessary documents, access to witnesses, and access to District legal counsel. Despite my repeated requests, the Board refused to cooperate in my investigation, prohibited me from interviewing witnesses, and refused to provide District legal counsel to assist in my investigation. On December 15, 2017, the Board prohibited me from conducting any investigation into the graduation allegations.

6. On or about December 11, 2017, my attorney filed a Notice of Claim with the District, which contains my claims against the Board and District for breach of my Employment Agreement, harassment, intentional infliction of emotional distress, interference with contract, and retaliation.

7. On December 19, 2017, despite the fact that a proper investigation has not been conducted or concluded, the Board sent the Aldinger report of November 15, 2017 to a reporter with the Poughkeepsie Journal. Given the multiple serious procedural flaws in the investigation, the only possible reason for the Board to want to see this publicized by the media is to defame, humiliate, and retaliate against me for enforcing my statutory and contractual rights by filing my appeal to the Commissioner and my Notice of Claim.

My priority is to conduct a proper investigation into the issues raised in the Aldinger reports, and to determine whether there were in fact any irregularities whatsoever in the 2013 cohort graduation. If so, I fully intend to address any such irregularities and bring the District into full compliance.

I have conferred with the Dutchess BOCES Superintendent and Deputy Superintendent regarding these issues, but without the Board's cooperation and access to District legal counsel, my ability to obtain information and answers and propose corrective action, if necessary, is severely limited. As a result, I respectfully request the Department to intervene, provide guidance, and ensure that I am able to carry out my duties as Superintendent.

Sincerely,



Dr. Nicole Williams  
Superintendent of Schools

# EXHIBIT Q

*LAW OFFICE OF*  
**STANLEY J. SILVERSTONE**

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December 23, 2017

BY E-MAIL AND U.S. MAIL

Mr. Roy F. Tario  
Professional Conduct Investigator  
New York State Education Department  
Office of School Personnel Review and Accountability/Test Security Unit  
89 Washington Avenue, Room 981 EBA  
Albany, NY 12234

Re: Poughkeepsie City School District

Dear Mr. Tario:

I represent Dr. Nicole Williams, Superintendent of Schools of the Poughkeepsie City School District. I am writing with respect to the concerns regarding the Board's graduation investigation raised by Dr. Williams in her letter to you dated December 20, 2017.

On December 21, 2017, the Board's Special Counsel, Todd Aldinger, Esq., informed me that he provided the Education Department with his two reports dated November 14, 2017 and December 15, 2017, as well as the reports of the High School Principal, Phee Simpson, the Director of Data Analysis and Accountability, Elizabeth Ten Dyke, and the Assistant Superintendent for Family and Student Support Services, Dr. Steven Rappleyea. All of these reports concern the Board's investigation into compliance with graduation requirements. I asked Mr. Aldinger whether he also provided SED with a copy of Dr. Williams' report dated December 4, 2017, which was submitted by Dr. Williams to the Board in response to Mr. Aldinger's November 14 report; he said that he did not provide Dr. Williams' report because he did not think it was responsive.

Mr. Aldinger's refusal to include Dr. Williams' report is unacceptable, and is yet another sign of the procedural and substantive flaws that continue to taint the Board's investigation. Not only did the Board commence the investigation in secret without notifying the District's Superintendent, prohibit Dr. Williams from conducting an appropriate investigation, and deny her access to District counsel, but they now compound their errors by refusing to provide SED with Dr. Williams' report because they do not like the content.



To rectify the Board's continued effort to silence and exclude the Superintendent, I am enclosing a copy of Dr. Williams' December 4, 2017 report, which she submitted to the Board in response to Mr. Aldinger's November 14, 2017 report. Mr. Aldinger did not inform me to whom he addressed the reports that he sent to SED. Since Dr. Williams has written to you regarding this situation, I am providing you with her report. However, in order to ensure that all of the reports are maintained in the same place in the Department, I would appreciate that if the reports provided by the Board are maintained by someone other than yourself, could you please advise me who that person is, and confirm whether you can forward this letter and Dr. Williams' report to that person.

Finally, I take this opportunity to remind the Board of the Commissioner's comment in her December 22, 2017 decision in the teacher transfer appeal that "the nature and tenor of the serious accusations made as part of this appeal reveal an unacceptable level of rancor that is not conducive to the effective governance of a public school district." I submit that the manner in which the Board is conducting this investigation (which commenced at the same time that the teacher transfer dispute arose) clearly violates the Commissioner's admonishment "to take all steps necessary to ensure that this controversy does not continue and that the district's leadership and resources are focused on the paramount goal of providing successful outcomes for students."

Thank you for your cooperation and assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley J. Silverstone", written in a cursive style.

Stanley J. Silverstone

cc: Dr. Nicole Williams  
Howard Miller, Esq.  
Todd Aldinger, Esq.



## **Poughkeepsie City School District**

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# Memorandum

**To:** Board of Education, Howard Miller, Esq., John Miller, Esq., Todd Aldinger, Esq.

**From:** Dr. Nicole Williams, Superintendent

**Date:** 12/4/2017

**Re:** Inquiry Regarding 2013 Cohort Graduations

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This memorandum is submitted in response to the Legal Memorandum of Mr. Aldinger dated November 14, 2017 (the "Report"), and the directive of Board President Watson sent by email on December 1, 2017, directing me to submit this memorandum by 4:00 PM on December 4, 2017.

### **Background**

Before addressing the Report, it is necessary to place it in proper context. It is clear to me that the hiring of Mr. Aldinger as "special counsel" and his investigation regarding the 2017 graduation is part of the Board majority's intentional and deliberate effort to undermine and usurp my authority as Superintendent and to retaliate against me for filing an appeal to the Commissioner of Education. This effort began with Mr. Aldinger's hiring at the Board's annual Reorganization Meeting on July 7, 2017, and continued with the Board's effort to unlawfully restrict my ability to transfer teachers within the District.

Mr. Aldinger was hired "to perform internal investigations surrounding the 2016 and 2017 elections and any other alleged misconduct, fraud or alleged crimes that the Board deems necessary to investigate." One would expect that an individual hired as "special counsel" to a school district would have significant legal experience, including many years of experience in education law. However, that is apparently not the case with Mr. Aldinger. According to the records of the New York Office of

Court Administration (“OCA”), Mr. Aldinger is a first-year attorney who was admitted to the New York Bar on January 11, 2017.<sup>1</sup>

OCA records reflect that Mr. Aldinger practices law at the firm of Ricotta & Visco, a medical malpractice firm in Buffalo, NY. However, an examination of the website of Ricotta & Visco does not show Mr. Aldinger listed as one of the firm attorneys (<https://ricotta-visco.com/attorneys/>). Thus, it appears that his OCA registration data is incorrect. A search of the internet shows that on January 31, 2017, Todd J. Aldinger joined Bouvier Law (<http://bouvierlaw.com/todd-j-aldinger-esq-joins-bouvier-law/>), a Buffalo law firm that does not practice education law. The firm’s announcement of Mr. Aldinger’s employment states that “Todd has a strong background in municipal law, real estate work, corporate practice, contracts and commercial law and also has a keen interest in family law, wills and estates and mental hygiene law.” Thus, at Bouvier Law, Mr. Aldinger neither practices education law, nor has a “keen interest” in it. Finally, it should be noted that the email address that Mr. Aldinger is using as “special counsel” is [toddaldinger@gmail.com](mailto:toddaldinger@gmail.com), which is not a law firm email address. Thus, whether Mr. Aldinger is representing the District through another firm or on his own as a first-year attorney is unknown. If he is practicing law on his own, I question whether the Board asked Mr. Aldinger for evidence of his malpractice insurance coverage.

Mr. Aldinger’s hiring coincided with the Board’s effort to restrict my ability to transfer teachers within the district. On July 14, 2017, the Board took the extraordinary action of adopting Resolution 18-0013, which placed a preemptive moratorium on all teacher transfers in the district for the 2017-18 school year. I immediately advised the Board that Resolution 18-0013 was unlawful, as it violated my statutory duties as Superintendent. On August 28, 2017, I issued a written memorandum to the Board, repeating my position that the moratorium was unlawful, and invoking my authority as the Receiver of Poughkeepsie Middle School to supersede Resolution 18-0013 and to effect the transfer of six teachers. Four of the six teachers complied with my directive to transfer, but the other two teachers refused to comply. The Board chose to support their insubordination over compliance with the law. On September 1, 2017, the Board issued letters to the teachers affected by the August 28 transfers, instructing them that they were “hereby directed by the Board of Education to disregard” my transfer directives.

In order to resolve the Board’s violation of the Education Law with respect to teacher transfers, I retained personal legal counsel pursuant to Section 16 of my Employment Agreement, and my attorney proceeded to file an appeal to the Commissioner of Education on September 28, 2017.

According to Mr. Aldinger’s November 14, 2017 report, he started his investigation in early October, as he states “[i]n early October, I was provided with a file containing information regarding questionable graduations.” (p. 2). Mr. Aldinger then writes that he “proceeded to analyze these documents, research the applicable laws and regulations, confer anonymously with state and federal authorities, and meet with a number of witnesses and whistleblowers.” In other words, it was not until shortly after I filed my appeal to the Commissioner regarding the validity of the Board’s teacher transfer moratorium that Mr. Aldinger began his investigation regarding the 2017 graduation. This raises the question of why his investigation did not start until “early October.” Given Mr. Aldinger’s lack of credentials for his position, his failure to involve me in the investigation, and the temporal proximity of the filing of my appeal to the Commissioner and the start of Mr. Aldinger’s investigation, it is clear that the investigation is, and was intended to be, retaliatory.

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<sup>1</sup> The New York attorney directory is located at <http://iapps.courts.state.ny.us/attorney/AttorneySearch>.

On November 17, 2017, the Board directed me to respond to “each and every concern” raised in the Aldinger report by the close of business on November 21, 2017. In other words, I was given four days to respond to a 27-page report. On November 18, 2017, my attorney responded on my behalf that the Board’s directive was made in bad faith and was both improper and unreasonable, and stated that I needed additional information and a reasonable amount of time in order to respond. On November 22, 2017, my attorney followed up with a letter specifying the information that I would need in order to respond, including all notes and transcripts from the interviews conducted by Mr. Aldinger. The Board has refused to provide me with the information that I requested.

### **Response to Report**

First and foremost, the Board is to be reminded that I am the Superintendent and Chief Executive Officer of this District. Therefore, it is not my intention to “respond” to the Report as if I myself were the subject of some investigation, but to: (i) issue my own preliminary analysis of the underlying matters after consulting with all relevant staff members who have knowledge of the issues regarding the 2013 cohort graduation; (ii) order all further actions as I deem necessary to reach appropriate conclusions about the serious questions raised regarding the 2013 cohort graduation; and (iii) state my position about the process followed in this investigation and of the conclusions reached in the Report.

The Board is also reminded that, pursuant to Education Law Section 2508(2) & (6), I have the inherent, non-delegable authority “to enforce all provisions of law and all rules and regulations relating to the management of the schools” and “to have supervision and direction over the enforcement and observance of the courses of study, *the examination and promotion of pupils*, and over all other . . . educational activities” [emphasis added]. And although this authority is to be exercised under the management, direction and control of this Board, the law required my input and management of the investigation.

Nonetheless, the Board chose to conduct the investigation in violation of the Education Law and my authority as Superintendent, without my knowledge or involvement, and we are now in the unfortunate position of needing a second full investigation into this matter, one which I direct and in which I have full access to our legal counsel as well as to all documents and witnesses I deem to be necessary or appropriate.

Let me be very clear that I believe that this entire investigation and Report was not a truth-finding mission at all, but a thinly-veiled attempt to entrap and retaliate against me. I fully intend to pursue all of my legal rights with respect to violations of my authority and all other inappropriate actions of this Board as will be highlighted below. As part of the exercise of my legal rights as Superintendent, I have instructed my personal counsel to file an appeal to the Commissioner of Education to obtain a ruling on the validity of the conduct of the Board’s investigation.

However, more importantly, the issues that have presented themselves must be addressed correctly. Therefore, I will be doing a student-by-student inquiry into the graduation records in question and I will be doing so with the assistance of district counsel and access to all relevant witnesses and documents.

To that end, I am hereby requesting that the Board direct Mr. Miller, our district counsel, to draft a summary of the legal issues discussed in this Report and have it delivered to me by no later than

December 9, 2017 at 5:00 p.m. I am also directing all staff members with knowledge of these issues, including Ms. Simpson, Ms. Lovinsky, and Dr. Rappleyea, to report to my office on Tuesday, December 5<sup>th</sup> at 9:00 a.m. so that interviews can be arranged.<sup>2</sup> I require Mr. Miller or a designated attorney from his firm to be present on Tuesday, December 5<sup>th</sup> at 9:00 a.m. and at all interviews to be conducted. Finally, I request the names of every person interviewed,<sup>3</sup> copies of the notes from such interviews and every document reviewed by Mr. Aldinger and/or the Board in the course of this investigation to be delivered to my office by Tuesday, December 5<sup>th</sup> at 9:00 a.m. Failure to deliver all such documents will be deemed to be per se bad faith on the part of this Board by obstructing a proper investigation.

Finally, I am respectfully requesting responses from the Board to the questions posed below by December 9, 2017 at 5:00 p.m.

(i) *Initial Inquiries*

Mr. Aldinger starts the Report by stating that, at the September 6<sup>th</sup> meeting, Dr. Watson “raised questions regarding information that she had recently received regarding Section 504 Safety Net accommodations that were granted in extremely close proximity to students’ exams in June and August 2017” and that “Board Vice-President Doreen Clifford raised additional questions about Appeals to Graduate with a Lower Score on a Regents Examination.” (Report at 1). I was not made aware of allegations of any irregularities in this regard and should have been *the very first person to whom they were reported*. The names of the individuals who raised these concerns to Dr. Watson and Ms. Clifford must be provided to me by December 9, 2017 so that they may be interviewed.

The Report goes on to state that “by a consensus of a majority of the Board,” Dr. Watson contacted Mr. Aldinger to instruct him to begin his “inquiry.” I hereby request responses to the following: (i) Was there a formal vote to begin the “inquiry”? If so, provide a copy of the Resolution by December 9<sup>th</sup> at 5:00, and if not, provide the names of the Board members who made up this “consensus”; (ii) Was there a formal vote regarding payment to Mr. Aldinger for this investigation? If so, provide a copy of the applicable Resolution by December 9<sup>th</sup> at 5:00.

(ii) *Legal and Factual Inquiry*

On pages 1-3, the Report describes the Section 504 process and “Safety Net Accommodations.” Because the Board has denied me contact with Mr. Aldinger, Mr. Miller should summarize the law applicable to Section 504 procedures and accommodations including the “low pass option” as well as the connection between these accommodations and the requirement to provide a free and appropriate public education as part of his report due on December 9<sup>th</sup>.

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<sup>2</sup> Note that I intend to interview Ms. Simpson, the principal of the school in question, and Ms. Lovinsky, who was quoted throughout the Report. Despite the essential connection of both these individuals to the matter under investigation, neither of them was interviewed by Mr. Aldinger. An appropriate investigation requires their input *before* a conclusion is reached.

<sup>3</sup> There should be no distinction made over anyone designated in the Report as a whistleblower. As the Chief Executive Officer of this District, I am the primary officer to whom any confidential allegations of misconduct should be directed.

On pages 8-9 of the report, Mr. Aldinger lists his conclusions about the appropriateness of the Section 504 meetings held on August 15, 2017. He states that there were “potential violations of 34 CFR 104.35(c), which requires PCSD ‘ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.’” Once again, I was unaware of the underlying facts on which Mr. Aldinger bases his conclusions and should have been immediately briefed by this Board and counsel about the concerns at issue. I will conduct the appropriate factual inquiry. Mr. Miller should include an analysis of this Regulation in his report, including discussion of the level of understanding of the law itself required of members of the 504 Committee. Finally, Mr. Miller should summarize the Regulations related to appeals to graduate with lower Regents scores.

Once I have conducted a full factual interview, I will discuss with Mr. Miller how the facts of this matter apply to the applicable law and Regulations summarized in his report. At that point, I will take any and all corrective actions necessary. If necessary, I will arrange for a meeting with the New York State Education Department (NYSED) and the Board of Cooperative Educational Services (BOCES) to gain their perspective, implement any changes that may be necessary and deal appropriately with staff in terms of training and/or remediation.

*(iii) Analysis of the Intent of the Report*

It is beyond question in my mind that the investigation and Report were conducted in bad faith, in that the investigation was conducted for an improper and dishonest purpose, namely, to entrap, harm, harass, humiliate and retaliate against me, instead of conducting an objective investigation to determine the truth regarding the 2013 cohort graduation. While I wholeheartedly agree that any violations of graduation protocols must be fully investigated and that absolute compliance with law in every case must be adhered to, the method by which this investigation was conducted and the way that the report is written lead to the inescapable conclusion that this Board is simply attempting to harm, discredit, and retaliate against me. If that were not the case, then why was I, the Superintendent, not made aware of the investigation until after it was completed? Why was I not interviewed as part of the inquiry? I am perplexed why the Board proceeded with its investigation without my knowledge, advice, participation or support.

Furthermore, the Report itself reads more like a legal brief than an objective finding of facts. For example, Mr. Aldinger states “reducing the required grade needed on exams to graduate, after the fact . . . can only be interpreted as a means to graduate these students, by whatever means possible” (p. 5) and “if students were given Section 504 Plans at the end of their academic careers just so they could graduate, that would be clearly inappropriate; however, it is arguably worse if these students actually had disabilities qualifying them under Section 504. Only instituting a Section 504 Plan at the very end of a truly disabled, Section 504-qualifying student’s academic career means that this student was deprived of receiving the benefits of Section 504 Plan accommodations during the vast majority of his/her academic career. This violates [applicable] regulations. . . .” This sort of rhetoric demonstrates that the purpose of the investigation was to reach a predetermined conclusion. It appears that Mr. Aldinger was hired not to conduct an inquiry but to reach a specific conclusion “by whatever means possible.”

In the section regarding appeals to graduate with lower scores on Regents examinations, Mr. Aldinger states that “once an appeal is initiated, state regulations require the school principal to ‘chair a standing

committee . . . ’ ” related to the appeal and that the principal must be included on the committee (pgs. 19-20). He also states that “it is important to note that these regulations require the Superintendent (not the Superintendent’s designee) to sign-off on all appeals” (p. 20). Mr. Aldinger later states that certain appeals in question were signed-off upon by Assistant Superintendent Farrell and not myself and that Assistant Superintendent Farrell “was under the impression” that I would then sign-off on the appeals (p. 21). In essence, the Report is saying that, under the applicable legal procedures, Ms. Simpson and I were indispensable parties. Yet neither of us was interviewed or made aware of the investigation until after the Report was issued. This fact makes it obvious that the Report is invalid and was motivated by bad faith, in that the investigation and Report were motivated by an improper and dishonest purpose, namely, to entrap, harm, harass, humiliate and retaliate against me, instead of conducting an objective investigation to determine the truth regarding the 2013 cohort graduation. A proper, objective investigation would have included interviews of all indispensable parties and witnesses.

Let me be very clear once again that I, as Superintendent, take the issue of graduation compliance very seriously and will conduct a full investigation with assistance of counsel and access to all parties and records. If it turns out there were any improper graduations of the 2013 cohort, I will address the matter appropriately. However, I will not tolerate the conduct of a quasi-investigation that appears to have been motivated by improper purposes and contaminated by the Board’s desire to harm myself and my administration. By the entire procedure followed, the decisions about who to inform and who not to inform and the amateurish and accusatory tone of the Report itself, it is clear that the Board has not done a proper investigation of the issue, so I will.

It is also clear to me that your intent is to distribute these one-sided findings, which were reached without my participation or knowledge, to the public in order to cause me harm. This is disgraceful conduct. The Board’s objective should be to conduct a fair inquiry and do what is best for the students of our District, not to conduct an investigation that violates the Education Law and my authority as Superintendent. I will exercise all of my legal recourse to make sure that, in the end, the findings of this investigation are reached fairly and objectively and that any necessary remediation will take place.

I respectfully expect and request your full cooperation in my investigation. My intent is to move forward in the best interests of the students and taxpayers of our community.