

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

In the Matter of the Claim of:

NICOLE WILLIAMS,

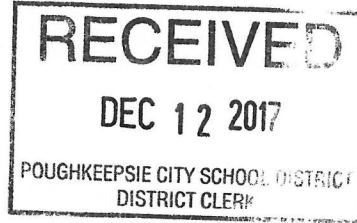
Claimant,

v.

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

Respondents.

NOTICE OF CLAIM



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.

4. Claimant has been employed by the Board as Superintendent of Schools of the District since July 1, 2013.

5. Claimant is currently employed as Superintendent pursuant to an agreement dated June 21, 2017 (the "Agreement").

6. This claim concerns (i) the Board's breach of Section 16 of the Agreement, which arose on September 14, 2017; (ii) the Board's breach of Section 3(b) of the Agreement, which arose on September 27, 2017; (iii) the Board's harassment, interference with contract, and intentional infliction of emotional distress, which arose on November 15, 2017; and (iv) the Board's retaliation against the Claimant, which arose in early October 2017.

I. Breach of Section 16

7. Section 16 of the Agreement permits the Claimant to retain separate legal counsel at District expense in certain circumstances. Section 16 provides as follows:

In the unlikely event that the SUPERINTENDENT believes that the Board is acting in derivation of law or a manner which violates her authority as the Superintendent of Schools, the SUPERINTENDENT shall be entitled, at District expense, to retain separate legal counsel to advise her on the legality of the proposed actions of the BOARD. Such representation will be available up to twenty-five thousand dollars (\$25,000) on a school-year basis and such appropriation shall be budgeted for annually. Prior to retaining legal counsel, the SUPERINTENDENT shall notify the BOARD in writing that she will be exercising her contractual rights pursuant to this paragraph. The Superintendent shall have the exclusive authority to execute a contract for professional legal services in accordance with this paragraph. The Superintendent shall comply with all procurement and other provisions under New York State law when selecting legal counsel pursuant to this

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 11th 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."

11. On September 14, 2017, Board President Felicia Watson sent an email to the Assistant Superintendent of Finance and Operations, Dawn Cupano, stating as follows:

In efforts to confirm and be proactive, I am informing you, as the Assistant Superintendent of Finance and Operations ... no payment for legal fees out of any PCSD budget will be made for the Superintendent's contract per Section 16 without an approved Board resolution.

12. Watson's September 14th directive to Assistant Superintendent Cupano constitutes an anticipatory breach of Section 16.

13. Section 16 contains no requirement for "an approved Board resolution" as a condition to compensation for legal fees. Clearly, no such resolution is required because the Board approved all of the terms of the Agreement on June 21, 2017. In fact, reading such a requirement into the Agreement would defeat the purpose of Section 16, which exists to provide the Superintendent with access to individual counsel in the event of a disagreement with the Board. Further, Section 16 provides that "[t]he 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." An "approved Board resolution" is not required in order for the District to pay its other legal bills.

14. On September 28, 2017, Claimant's counsel 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 null and void *ab initio*, and for other relief. Said appeal argues, not only that Resolution 18-0013 violated the New York State Education Law and Claimant's authority as Superintendent, but that

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

the BOARD, with support of a majority of BOARD members may direct the Superintendent to take any action within the scope of her duties under law as a SUPERINTENDENT and the BOARD may not direct the SUPERINTENDENT to take any actions that are outside of her scope of duties under law.

19. On September 13, 2017, the Board issued two counseling memoranda to the Claimant.

20. The Agreement does not provide authority for the Board to issue “counseling memoranda” to the Claimant. Section 3(b) of the Agreement only permits the Board to “confidentially and discretely refer to the SUPERINTENDENT in writing any criticism, complaint or suggestion...”

21. On September 27, 2017, the Board publicly approved Resolution 18-0158, which ratified and approved confidential counseling memoranda “to a particular employee.”

22. Although Resolution 18-0158 on its face did not disclose the identity of the “particular employee” to whom the counseling memoranda were issued, it was clear to everyone in attendance at the meeting, and to District employees and others who had seen the resolution, that the counseling memoranda were issued to the Claimant. Since the superintendent is the only employee whom the Board directly supervises, it was obvious to everyone that counseling memoranda issued by the Board could only be issued to the Claimant.

23. Thus, Resolution 18-0158 violates Section 3(b) of the Agreement, which requires that any criticism or complaint referred to the Claimant must be referred “confidentially and discretely.” The Board’s action in issuing counseling memoranda

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."¹ Thus, Dr. Williams has been provided with only a tiny percentage of the complete report.

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

29. On or about November 17, 2017, the Board issued a directive to Claimant requiring her to respond to “each and every concern” raised in the Memorandum by the close of business on November 21, 2017.

30. At no time during the pendency of the investigation was Dr. Williams, the chief executive officer of the District, made aware of any inquiry regarding alleged graduation requirement violations. In fact, Dr. Williams, the Superintendent of the district, 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.

31. Furthermore, at no time during the investigation was Dr. Williams interviewed or asked in any manner about the concerns under investigation.

32. In addition, several District administrators who had vital information about the subject of the investigation were not interviewed at any time because the Board knew that the information they would provide would exonerate the Claimant of any misconduct.

33. Although the Claimant denies any wrongdoing with respect to the subject matter of the investigation, regardless of the substance of the findings, the process followed by the Board proves that the investigation was not a truth-finding mission at all, but a thinly-veiled attempt to entrap, harm, harass and humiliate the Claimant, and to interfere with her contractual rights.

34. The four-day deadline contained in the Board’s directive on November 17, 2017 is further evidence of the Board’s bad faith. In springing a twenty-seven

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.

Damages

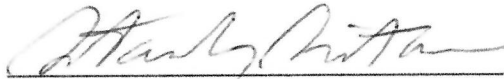
38. As a result of the Respondents' unlawful conduct, including Respondents' breach of the Agreement, Claimant, Dr. Nicole Williams, has suffered:

(i) damages in the amount of the legal fees that she has incurred (\$13,576.07 as of November 13, 2017), and will continue to incur, pursuant to Section 16 of the Agreement, not to exceed twenty-five thousand dollars per school year; and

(ii) damages for irreparable harm to her reputation, and severe emotional distress, in the amount of One Million Dollars (\$1,000,000).

WHEREFORE, the said claim and demand is hereby presented for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the Claimant intends to commence an action on this claim.

Dated: December 1, 2017



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*Attorney for Claimant
Dr. Nicole Williams*

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

VERIFICATION

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

I, Nicole Williams, being duly sworn, depose and say:

I am the Claimant in the above-entitled claim. I have read the foregoing Notice of Claim and know the contents thereof. The contents are true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Nicole Williams

Sworn to before me
this 1st day of December, 2017



Notary Public

Lisa Clark
Notary Public, State of New York
Qualified in Dutchess County
ommission Expires Nov. 24, 2020