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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

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, 2017.¹

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, 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.

¹ 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 5th at 9:00 a.m. so that interviews can be arranged.² I require Mr. Miller or a designated attorney from his firm to be present on Tuesday, December 5th at 9:00 a.m. and at all interviews to be conducted. Finally, I request the names of every person interviewed,³ 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 5th 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 6th 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 9th 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 9th 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 9th.

² 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.

³ 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.