

Tuxedo UFSD Arbitration-Ziegelbaur - Vol. I
October 15, 2021

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Tuxedo Union Free School District

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IN THE MATTER OF

State Education Law Section 1709 (18)

Re: Board Member DOROTHY ZIEGELBAUR,

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October 15, 2021

10:15 a.m. - 2:33 p.m.

Tuxedo UFSD

1 Tornado Drive

Tuxedo, New York

B E F O R E: CAROL M. HOFFMAN, ESQ.

ARBITRATOR

REPORTED BY: ROBERT E. LEVY, C.S.R.

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2 A P P E A R A N C E S :

3 SHAW, PERELSON, MAY & LAMBERT, LLP

4 Attorneys for Tuxedo U.F.S.D. Board of Education

5 21 Van Wagner Road

6 Poughkeepsie, New York 12603

7 BY: DAVID S. SHAW, ESQ.

8

9 LITTMAN KROOKS LLP

10 Attorneys for Respondent

11 Dorothy Ziegelbaur

12 399 Knollwood Road

13 White Plains, New York 10603

14 BY: MARION M. WALSH, ESQ.

15

16 ALSO PRESENT:

17 TUXEDO U.F.S.D. BOARD OF EDUCATION

18 DAN CASTRICONE, President

19 LUCY CEREZO SCULLY, Vice President

20 JOE RICKARD

21 ALLYSSA HORNEFF

22 GARY HEAVNER

23 WILLIAM GIVENS

24 DOROTHY ZIEGELBAUR

25 MATTHEW TAKEUCHI, Clerk Pro Tem

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3	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: Good morning,</p> <p>3 everybody. My name is Carol Hoffman.</p> <p>4 I got appointed by you to conduct this</p> <p>5 hearing. And I wanted to just say a</p> <p>6 few things at the beginning about some</p> <p>7 preliminary discussions that I've had</p> <p>8 with Ms. Walsh and with Mr. Shaw.</p> <p>9 We have had two Zoom prehearing</p> <p>10 conferences to talk about the process</p> <p>11 for today. Of course the adjournment</p> <p>12 request came up and the other legal</p> <p>13 issues that are now before the</p> <p>14 Commissioner.</p> <p>15 So my role, as you know, because</p> <p>16 you appointed me, is to conduct the</p> <p>17 hearing. The decision lies with you</p> <p>18 because you are not only witnesses but</p> <p>19 you will be judges about these</p> <p>20 charges. Now we have already agreed</p> <p>21 that there will be three joint</p> <p>22 exhibits and they have been marked and</p> <p>23 they are in evidence as of this</p> <p>24 moment.</p> <p>25 (Whereupon, Arbitrator</p>	5	<p>1 Proceedings</p> <p>2 Mr. Levy and his company Stenokath.</p> <p>3 So at this time we can begin,</p> <p>4 after this first distribution of</p> <p>5 exhibits, we can begin with opening</p> <p>6 statements. Bear in mind that when</p> <p>7 you do provide testimony you'll be</p> <p>8 sworn in by me so that your testimony</p> <p>9 will be sworn. And after you provide</p> <p>10 direct testimony you will be cross</p> <p>11 examined and you will still be under</p> <p>12 oath.</p> <p>13 So we can begin this morning.</p> <p>14 The counsel have advised me that they</p> <p>15 have opening statements they would</p> <p>16 like to make. They can do them at the</p> <p>17 podium or from their counsel table,</p> <p>18 along with any other remarks that they</p> <p>19 want to make at this time.</p> <p>20 (Pause)</p> <p>21 THE ARBITRATOR: Ordinarily, at</p> <p>22 this time even before opening</p> <p>23 statements begin, it would be my role</p> <p>24 to read the charges. There are only</p> <p>25 two charges and that's the scope of</p>
4	<p>1 Proceedings</p> <p>2 Appointment Resolution was marked as</p> <p>3 Joint Exhibit 1 for identification,</p> <p>4 and received into evidence, as of this</p> <p>5 date.)</p> <p>6 (Whereupon, set of charges was</p> <p>7 marked as Joint Exhibit 2 for</p> <p>8 identification, and received into</p> <p>9 evidence, as of this date.)</p> <p>10 (Whereupon, response was marked</p> <p>11 as Joint Exhibit 3 for identification,</p> <p>12 and received into evidence, as of this</p> <p>13 date.)</p> <p>14 THE ARBITRATOR: Joint Exhibit</p> <p>15 Number 1 is the resolution of my</p> <p>16 appointment. Joint number 2 is the</p> <p>17 set of charges and number Joint 3 is</p> <p>18 the response. Mr. Shaw can hand those</p> <p>19 out. I have a copy.</p> <p>20 Now we have already addressed an</p> <p>21 issue that there will be no recording</p> <p>22 by any recording device of this</p> <p>23 executive session hearing. And that</p> <p>24 there is a transcript which will be a</p> <p>25 verbatim transcript maintained by</p>	6	<p>1 Proceedings</p> <p>2 this hearing today. So Charge Number</p> <p>3 1, "In that on or about" -- it's</p> <p>4 Official Misconduct. "In that on or</p> <p>5 about August 9, 2021, Dorothy</p> <p>6 Ziegelbaur revealed without</p> <p>7 authorization by email, confidential</p> <p>8 information about the District's</p> <p>9 negotiations position and bargaining</p> <p>10 with the Tuxedo Teachers' Association,</p> <p>11 the TTA, that she learned of in a duly</p> <p>12 convened Board of Education executive</p> <p>13 session, held on July 28, 2021.</p> <p>14 "Such revelation was made to the</p> <p>15 TTA's New York State United Teachers</p> <p>16 bargaining representative, Cairrenn</p> <p>17 Broderick."</p> <p>18 Charge Number 2, Official</p> <p>19 Misconduct. "In that on or about</p> <p>20 September 15, 2021, Dorothy Ziegelbaur</p> <p>21 was issued a confidential report</p> <p>22 prepared by Board-appointed</p> <p>23 investigator Margaret Muenkel,</p> <p>24 regarding an alleged breach of</p> <p>25 confidential personally identifiable</p>

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7	<p>1 Proceedings</p> <p>2 student information that was reviewed</p> <p>3 in executive session and to be</p> <p>4 collected back from each member of the</p> <p>5 Board to protect the privacy rights of</p> <p>6 those individuals identified in the</p> <p>7 report. Ms. Ziegelbaur refused to</p> <p>8 return the report of the meeting and</p> <p>9 refuses to return the report to date."</p> <p>10 That consists of the entire</p> <p>11 scope of this hearing, those two</p> <p>12 charges. Mr. Shaw, do you want to</p> <p>13 begin with an opening statement?</p> <p>14 MS. WALSH: May I just say one</p> <p>15 thing?</p> <p>16 THE ARBITRATOR: Of course.</p> <p>17 MS. WALSH: There is an issue</p> <p>18 that came up in connection with the</p> <p>19 hearing on the role of the Hearing</p> <p>20 Officer, which Mr. Shaw and</p> <p>21 Ms. Hoffman and I had discussions on.</p> <p>22 Now the question is, typically,</p> <p>23 the Hearing Officer is appointed and</p> <p>24 there is a resolution to conduct a</p> <p>25 hearing. Which there was a resolution</p>	9	<p>1 Proceedings</p> <p>2 decision that Mr. Shaw is familiar</p> <p>3 with as well, which I gave to Ms.</p> <p>4 Hoffman --</p> <p>5 (Pause)</p> <p>6 MS. WALSH: So there is a case</p> <p>7 Francis Hofer. And in that case the</p> <p>8 Board did approve a resolution to</p> <p>9 conduct a hearing that without, it did</p> <p>10 not include the word decision. And</p> <p>11 then this Hearing Officer did actually</p> <p>12 make the decision.</p> <p>13 So I will give this copy to</p> <p>14 Ms. Hoffman. And I -- this is really</p> <p>15 going to be a Board decision but I</p> <p>16 think I would prefer and I ask that</p> <p>17 Ms. Hoffman have the authority to give</p> <p>18 a recommendation and decision.</p> <p>19 THE ARBITRATOR: Well, let me be</p> <p>20 clear on that. I have had an</p> <p>21 opportunity to review the entire file</p> <p>22 that's been provided to me. And part</p> <p>23 of that file included a Board</p> <p>24 resolution from June in another Board</p> <p>25 proceeding in this District. And that</p>
8	<p>1 Proceedings</p> <p>2 here and the resolution states, "Be it</p> <p>3 resolved that the Board hereby</p> <p>4 appoints Carol M. Hoffman, Esquire to</p> <p>5 conduct a hearing pursuant to District</p> <p>6 Policy 1615 and Education Law 1718</p> <p>7 regarding charges of official</p> <p>8 misconduct."</p> <p>9 Now the Board can ask</p> <p>10 Ms. Hoffman to also give a decision or</p> <p>11 recommendation. And I ask, I thought</p> <p>12 this would be fairer to all especially</p> <p>13 given that you are going to be</p> <p>14 witnesses. And it is unusual to have</p> <p>15 fact witnesses and adjudicators. So I</p> <p>16 had asked Ms. Hoffman, I thought it</p> <p>17 was much more appropriate that</p> <p>18 Ms. Hoffman would give a</p> <p>19 recommendation in hearing.</p> <p>20 Now the position of Mr. Shaw and</p> <p>21 Ms. Hoffman was that perhaps the words</p> <p>22 conduct a hearing do not include the</p> <p>23 decision and recommendation. And I</p> <p>24 request that we use that and we</p> <p>25 certainly could. And that the one</p>	10	<p>1 Proceedings</p> <p>2 resolution appointing the Hearing</p> <p>3 Officer was clear that the Hearing</p> <p>4 Officer was appointed to conduct the</p> <p>5 hearing, to hear and report and make a</p> <p>6 recommendation.</p> <p>7 That is not the case with me.</p> <p>8 The resolution you provided for me did</p> <p>9 not specify that. So I'm here to</p> <p>10 manage the hearing, to make sure that</p> <p>11 it's fair, that everybody gets to</p> <p>12 testify, cross-examination, handle any</p> <p>13 questions that come up, and make</p> <p>14 rulings about the relevance or the</p> <p>15 appropriateness of different</p> <p>16 evidentiary pieces of information.</p> <p>17 But other than that my role is</p> <p>18 to conduct the hearing. The Board</p> <p>19 then will have its deliberations. And</p> <p>20 the process for how you conduct</p> <p>21 yourselves going forward after the</p> <p>22 hearing, whether we are going to wait</p> <p>23 and do briefs and all that or whether</p> <p>24 we are just going to end the hearing</p> <p>25 and have you deliberate and come to</p>

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11	<p>1 Proceedings</p> <p>2 your decision is up to you. All</p> <p>3 right?</p> <p>4 So yes, I have received the</p> <p>5 decision Ms. Walsh is referring to but</p> <p>6 you should know that the Commissioner</p> <p>7 has issued decisions on both ways,</p> <p>8 about whether or not, what the role of</p> <p>9 the Hearing Officer would be and what</p> <p>10 it would include and at the end of the</p> <p>11 day it's up to the Board. Okay?</p> <p>12 MS. WALSH: You can tell, I'm</p> <p>13 not going to give the Board advice.</p> <p>14 My position was that for the Board to</p> <p>15 conduct a hearing was clear enough to</p> <p>16 make a decision.</p> <p>17 MR. SHAW: Okay. So what I'd</p> <p>18 like to clarify is that in conducting</p> <p>19 the hearing it would be my expectation</p> <p>20 that you would make the rulings on</p> <p>21 evidence and you could be in the star</p> <p>22 chamber proceedings with the Board.</p> <p>23 You can counsel them about their</p> <p>24 decision-making but the</p> <p>25 decision-making would be the Board's</p>	13	<p>1 Proceedings</p> <p>2 that opposing counsel has just</p> <p>3 provided you with a copy of a</p> <p>4 Commissioner's decision. And we will</p> <p>5 be giving you other copies and we</p> <p>6 would want you to essentially take</p> <p>7 quasi-judicial notice that any</p> <p>8 Commissioner's decision exists in the</p> <p>9 public records. They are viewable at</p> <p>10 the commissioner's website under</p> <p>11 decisions of the commissioner of the</p> <p>12 State of New York, office of counsel.</p> <p>13 So whatever you may hear about</p> <p>14 or receive during today's proceedings</p> <p>15 are verifiable at that website. So I</p> <p>16 would like it also to be a</p> <p>17 consideration for administrative</p> <p>18 convenience that matters such as a</p> <p>19 copy of Board Policy 1301 can go into</p> <p>20 the record with notice that it is a</p> <p>21 policy of the district.</p> <p>22 Also we would like the Board and</p> <p>23 Ms. Hoffman to have a copy of the</p> <p>24 relevant FOIL statute regarding</p> <p>25 confidentiality and with respect to</p>
12	<p>1 Proceedings</p> <p>2 decision-making with respect to</p> <p>3 findings of fact and whether or not</p> <p>4 there would be removal from the Board.</p> <p>5 And I think you would agree,</p> <p>6 Ms. Walsh, that there are only two</p> <p>7 statuses for a Board member. You are</p> <p>8 either on the Board, or you are</p> <p>9 removed from the board.</p> <p>10 There is no censure, no fine, no</p> <p>11 discipline. And the statute under</p> <p>12 which we're proceeding is an old</p> <p>13 statute and it refers to a Board</p> <p>14 hearing. And as indicated earlier</p> <p>15 today in the open meeting, there is</p> <p>16 high level precedent indicating that</p> <p>17 these proceedings may be conducted</p> <p>18 privately and that's a Board decision</p> <p>19 and these are quasi judicial</p> <p>20 proceedings that are exempt from the</p> <p>21 Open Meetings law, under section 108.1</p> <p>22 of the Public Officers Law. That's</p> <p>23 where the Open Meetings Law is</p> <p>24 located.</p> <p>25 As a housekeeping matter, I know</p>	14	<p>1 Proceedings</p> <p>2 inter-agency documents and the status</p> <p>3 that they have in terms of disclosure</p> <p>4 by anyone other than by Board consent.</p> <p>5 And also that part of the FERPA</p> <p>6 regulations, the Federal Student</p> <p>7 Privacy Law. That indicates that,</p> <p>8 that law provides for inspect and</p> <p>9 review but not copies of the student</p> <p>10 record unless it is not possible for</p> <p>11 the parent to understand what's in the</p> <p>12 record without a copy.</p> <p>13 So we would like to perhaps at</p> <p>14 this point provide those documents, if</p> <p>15 not as joint exhibits, as, we calling</p> <p>16 it district and respondent?</p> <p>17 THE ARBITRATOR: Exactly.</p> <p>18 MR. SHAW: As district numbered</p> <p>19 exhibits, which basically are to give</p> <p>20 notice of policy and laws.</p> <p>21 MS. WALSH: Mr. Shaw, I am, I</p> <p>22 think you did incorrectly say that</p> <p>23 1709(18) is an antiquated law. That</p> <p>24 is why we are having that discussion</p> <p>25 about the procedures. There is no set</p>

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15	<p>1 Proceedings 2 procedure under 1709(18). And as 3 Mr. Shaw noted the decisions by the 4 Commissioner go in, they give many 5 different parameters, many different 6 findings and many different ways to do 7 that. 8 Because of that and especially 9 the way this hearing is being 10 conducted, we have, reserve rights for 11 an open meeting lobby because I 12 believe the way this, it is not as 13 part of a judicial proceeding. It is 14 not reviewable right now by a court. 15 It can be reviewed by the 16 Commissioner and when you have fact 17 witnesses as adjudicators, that 18 creates a lot of issues to me. But 19 it's necessary, the issue of fact 20 witnesses without the decision and 21 recommendation of the Hearing Officer. 22 So I truly prefer -- 23 (Inaudible) 24 MS. WALSH: I reserve rights and 25 respectfully disagree in that regard.</p>	17	<p>1 Proceedings 2 in the hearing. The evidence should 3 be, you know, factual. 4 MR. SHAW: We are perfectly 5 satisfied with judicial notice as long 6 as it is part of the hearing and it's 7 on the record what we are referring to 8 for consideration as such. 9 THE HEARING OFFICER: Okay. So 10 the issue really is am I taking 11 judicial notice or do you want to put 12 them in as district exhibits, which 13 would be the Board policy, the FOIL 14 statutes, the FERPA statutes. And any 15 commissioner's decisions that are 16 offered, not casually such as this but 17 as an exhibit. 18 So that's really the issue. How 19 do you want to do it? I'm fine. 20 MS. WALSH: I think they should 21 be District Exhibits. 22 THE ARBITRATOR: Then this 23 decision you gave me should be one as 24 well. 25 MS. WALSH: And that would be --</p>
16	<p>1 Proceedings 2 And I also just want to note that the 3 statute you are referring to, there is 4 case law, there is guidance letters, 5 there is, it is not as simple as 6 providing a statute and saying this is 7 the law. 8 Because if you're wanting to do 9 that then I would also want to give 10 guidance letters and precedent on why, 11 how this is being interpreted. 12 THE ARBITRATOR: I took 13 Mr. Shaw's comments to be I was to 14 take particular notice of these 15 particular statutory provisions. 16 MR. SHAW: And the Board members 17 who are judges. 18 THE ARBITRATOR: Okay, that's 19 fine. 20 MS. WALSH: But then I would 21 just ask that we do have closing 22 statements. And I would, I don't 23 think there should be evidence in 24 hearings; the law is the law and I 25 disagree with having them in evidence</p>	18	<p>1 Proceedings 2 (Inaudible) 3 THE ARBITRATOR: Okay, okay. 4 MS. ZIEGELBAUR: There were no 5 Respondent Exhibits provided. 6 MS. WALSH: I have a set of 7 exhibits as well. 8 THE ARBITRATOR: So are we 9 making this decision Respondent's 1? 10 MS. WALSH: I'm going to go with 11 letters. And I will admit it after 12 I -- 13 THE ARBITRATOR: In order. 14 Okay. And I don't have it yet. It is 15 just over here in the corner here. 16 MS. WALSH: We will do letters. 17 THE ARBITRATOR: Okay. 18 Respondent's A through -- 19 MS. WALSH: And I'm not going to 20 make that A right now because -- 21 THE ARBITRATOR: Right, because 22 you have an order in already. We'll 23 fit in later. I get it. 24 MS. ZIEGELBAUR: When the 25 original charges were brought, the</p>

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19	<p>1 Proceedings</p> <p>2 policy reference was 1315. This does</p> <p>3 not reflect the charge -- -</p> <p>4 (Inaudible)</p> <p>5 (PAUSE)</p> <p>6 MS. ZIEGELBAUR: The exhibit</p> <p>7 provided references a completely</p> <p>8 different policy number which is 1301,</p> <p>9 which is improper. The charges, as</p> <p>10 filed, referenced policy 1315, which</p> <p>11 for the record does not exist as far</p> <p>12 as we can determine.</p> <p>13 It is not in the policy manual</p> <p>14 that the Board was provided copies of</p> <p>15 individually. It is not on the</p> <p>16 district website and it is also not</p> <p>17 contained in WordDoc.</p> <p>18 THE ARBITRATOR: So is that an</p> <p>19 error and it really doesn't exist and</p> <p>20 it's really 1301? Is that where we</p> <p>21 are?</p> <p>22 MR. SHAW: There has been</p> <p>23 communication, between Counsel, myself</p> <p>24 to Ms. Walsh that that was a</p> <p>25 typographical error. The statement of</p>	21	<p>1 Proceedings</p> <p>2 take that up at a different time?</p> <p>3 It's up to you. I'm here for</p> <p>4 you all in whatever capacity. I've</p> <p>5 been appointed for the conduct of it</p> <p>6 at this time.</p> <p>7 MR. SHAW: And if I may, I</p> <p>8 believe that that decision would be</p> <p>9 timely when they do their star</p> <p>10 chambers proceedings. How they go</p> <p>11 about making a decision.</p> <p>12 THE ARBITRATOR: Fine. That's</p> <p>13 why I'm suggesting we get underway.</p> <p>14 MS. WALSH: The only, I'm sorry.</p> <p>15 The only, as I'm a hearing officer and</p> <p>16 I'm also an attorney of many hearings.</p> <p>17 It's, I think this should be</p> <p>18 decided early on for Ms. Hoffman's</p> <p>19 sake as well as the board's sake,</p> <p>20 because it is a different proceeding.</p> <p>21 But it is up to you.</p> <p>22 THE ARBITRATOR: Well, I'm not</p> <p>23 going to miss a beat and we have a</p> <p>24 transcript so I'm fine. Whenever you</p> <p>25 --</p>
20	<p>1 Proceedings</p> <p>2 charges refers to the correct policy</p> <p>3 1301.</p> <p>4 THE ARBITRATOR: Okay.</p> <p>5 MS. WALSH: And I have said that</p> <p>6 is not a minor error. That's a very</p> <p>7 significant error. I don't feel</p> <p>8 it's--</p> <p>9 (Inaudible)</p> <p>10 THE ARBITRATOR: Okay.</p> <p>11 Everyone's position on that has been</p> <p>12 heard.</p> <p>13 MS. HORNEFF: I have a question.</p> <p>14 THE ARBITRATOR: Yes?</p> <p>15 MS. HORNEFF: Why do we not want</p> <p>16 your recommendations or why would we</p> <p>17 not have a recommendation from you?</p> <p>18 THE ARBITRATOR: It hasn't been</p> <p>19 discussed with the Board I guess. But</p> <p>20 why don't we do this. Either you are</p> <p>21 going to take some time to, I don't</p> <p>22 know, Mr. Shaw, your counsel, this is</p> <p>23 your client. So if you want to take</p> <p>24 time with them or do you want to begin</p> <p>25 with the hearing, get it underway and</p>	22	<p>1 Proceedings</p> <p>2 MR. GIVENS: She should proceed</p> <p>3 like we may ask her for a</p> <p>4 recommendation?</p> <p>5 THE ARBITRATOR: Exactly.</p> <p>6 MR. GIVENS: Or we may not?</p> <p>7 THE ARBITRATOR: Exactly.</p> <p>8 MR. GIVENS: So we should be</p> <p>9 prepared either way.</p> <p>10 MS. ZIEGELBAUR: Great. Yes.</p> <p>11 THE ARBITRATOR: Okay.</p> <p>12 MS. ZIEGELBAUR: The only other</p> <p>13 comment I would like to make is I'm</p> <p>14 the subject of this. There were</p> <p>15 intertwining circumstances that also</p> <p>16 have Daniel Castricone as the subject</p> <p>17 of some of the exhibits. I would</p> <p>18 respectfully request that</p> <p>19 Mr. Castricone, should the board</p> <p>20 decide to vote, Mr. Castricone recuse</p> <p>21 himself from that vote and not file an</p> <p>22 opinion on that, on the final outcome</p> <p>23 of this hearing.</p> <p>24 THE ARBITRATOR: Yes. I</p> <p>25 understand that is before the</p>

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23	<p>1 Proceedings</p> <p>2 Commissioner as well in all of</p> <p>3 Ms. Walsh's papers.</p> <p>4 MS. WALSH: It is and we want to</p> <p>5 reiterate that request as well.</p> <p>6 THE ARBITRATOR: Right. And so</p> <p>7 that will be handled in that form.</p> <p>8 MS. ZIEGELBAUR: I'm also</p> <p>9 informed that that is for the</p> <p>10 Commissioner to remove him from this</p> <p>11 proceeding. I'm specifically</p> <p>12 requesting that he recuse himself from</p> <p>13 the vote.</p> <p>14 MR. CASTRICONE: You know what,</p> <p>15 let's not play ping pong against us.</p> <p>16 You know, I feel, I appreciate it but</p> <p>17 let's just, let's move this hearing</p> <p>18 on.</p> <p>19 MS. WALSH: I do think that this</p> <p>20 should be heard though. I do think it</p> <p>21 is important to hear.</p> <p>22 THE ARBITRATOR: Will it be part</p> <p>23 of your opening statement?</p> <p>24 MR. SHAW: It will be heard and</p> <p>25 its time isn't now. It's later,</p>	25	<p>1 Proceedings</p> <p>2 So let's have Mr. Shaw have his</p> <p>3 day with the opening statement and Ms.</p> <p>4 Walsh have hers. And hold any</p> <p>5 questions; scribble them down for</p> <p>6 later. Okay?</p> <p>7 MR. CASTRICONE: Before we</p> <p>8 begin, the exhibit that I was handed</p> <p>9 has several blank pages in it. Is</p> <p>10 that on purpose, am I missing</p> <p>11 something?</p> <p>12 MR. HEAVNER: I got it. Me too;</p> <p>13 I wasn't sure if --</p> <p>14 MS. ZIEGELBAUR: They're all</p> <p>15 that way.</p> <p>16 MR. HEAVNER: So that's on</p> <p>17 purpose? Okay.</p> <p>18 MS. ZIEGELBAUR: So the first</p> <p>19 three exhibits are we referencing them</p> <p>20 that were handed out? What is their</p> <p>21 reference number? Reference numbers</p> <p>22 because the one David Shaw handed out</p> <p>23 is Exhibit 1.</p> <p>24 MR. SHAW: District 1.</p> <p>25 MS. ZIEGELBAUR: District 1?</p>
24	<p>1 Proceedings</p> <p>2 appropriately later. So I would like</p> <p>3 to present District Exhibit 1, which</p> <p>4 is Board Policy 1301. And have that</p> <p>5 marked.</p> <p>6 THE ARBITRATOR: One of the</p> <p>7 things we want to think about is, if</p> <p>8 we are going to have an orderly</p> <p>9 hearing, we are going to have, this</p> <p>10 section now will be opening</p> <p>11 statements.</p> <p>12 Both Counsel are going to have a</p> <p>13 full opportunity to explain their</p> <p>14 positions. And in doing so there is a</p> <p>15 flow to this. They are going to give</p> <p>16 you certain exhibits that they want to</p> <p>17 refer to in their opening statements.</p> <p>18 And if we can hold the questions</p> <p>19 that you might have, at least until an</p> <p>20 opening statement, we have a kind of a</p> <p>21 rule in court that we don't interrupt,</p> <p>22 even Counsel doesn't interrupt, let</p> <p>23 alone Board members or potential fact</p> <p>24 witnesses interrupt an opening</p> <p>25 statement.</p>	26	<p>1 Proceedings</p> <p>2 And the other three exhibits, how are</p> <p>3 the --</p> <p>4 THE ARBITRATOR: They were Joint</p> <p>5 Exhibits 1, 2 and 3. Joint Exhibit 1</p> <p>6 is the resolution appointing me.</p> <p>7 Joint 2 is the charges, Joint 3 is the</p> <p>8 response.</p> <p>9 MS. WALSH: And I'd object to</p> <p>10 District 1 for the reason stated, that</p> <p>11 this is not the policy that is</p> <p>12 referenced in resolution.</p> <p>13 (Pause)</p> <p>14 (Whereupon, Board Policy 1301</p> <p>15 was marked as District Exhibit 1 for</p> <p>16 identification, and received into</p> <p>17 evidence, as of this date.)</p> <p>18 MS. WALSH: We should include</p> <p>19 the entire --</p> <p>20 THE ARBITRATOR: I can take</p> <p>21 judicial notice of the entire statute</p> <p>22 and say that this is simply an</p> <p>23 excerpt. So we have 1 as the policy.</p> <p>24 (Pause)</p> <p>25 THE ARBITRATOR: Mr. Shaw,</p>

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27	<p>1 Proceedings 2 District 1 is the policy. What is 2? 3 MR. SHAW: Exhibit 2 is Section 4 87 of the Public Officers Law. It is 5 marked and it is on your table. 6 (Whereupon, Section 87 of Public 7 Officers Law was marked as District 8 Exhibit 2 for identification, and 9 received into evidence, as of this 10 date.) 11 MR. SHAW: Now I have three 12 parts of the FERPA regulations: 13 99.10, 99.11 and 99.12. So I'd like 14 these to go in and they could go in as 15 District Exhibit 3A, B and C. 16 THE ARBITRATOR: Okay. 17 (Whereupon, FERPA regulation 18 99.10 was marked as District Exhibit 19 3A for identification, and received 20 into evidence, as of this date.) 21 (Whereupon, FERPA regulation 22 99.11 was marked as District Exhibit 23 3B for identification, and received 24 into evidence, as of this date.) 25 (Whereupon, FERPA regulation</p>	29	<p>1 Proceedings 2 District Exhibit 4 for identification, 3 and received into evidence, as of this 4 date.) 5 THE ARBITRATOR: Okay. 6 MS. WALSH: Ms. Hoffman, would 7 you prefer I give my exhibits when I 8 open my case? Does that make sense? 9 THE ARBITRATOR: Well, we can 10 get it all out of the way now. What's 11 better? 12 MR. SHAW: What are you giving? 13 MS. WALSH: I had the same ones 14 that I had provided to the affidavit 15 so I have a copy. 16 THE ARBITRATOR: You want to do 17 it at the beginning of your -- 18 MR. SHAW: No. I'd rather, you 19 know anything -- 20 THE ARBITRATOR: Well, first of 21 all, anything that's been provided if 22 you have an objection to it, then we 23 don't put it in this way. So if it is 24 something that you both looked at and 25 you're both agreeing go in as</p>
28	<p>1 Proceedings 2 99.12 was marked as District Exhibit 3 3C for identification, and received 4 into evidence, as of this date.) 5 MS. WALSH: I have one statement 6 on the District Exhibits D3A, B and C. 7 Again this is not a complete list of 8 documents. 9 THE ARBITRATOR: Right. 10 MS. WALSH: And that the full 11 FERPA statute regulations. So I ask 12 for -- to put in the whole statute. 13 (Pause) 14 THE ARBITRATOR: Okay. And 15 these are excerpts of the full 16 statutory Family Education Rights to 17 Privacy Act, FERPA. 18 MS. WALSH: Yes. 19 MR. SHAW: Lastly, I'd like 20 marked as District Exhibit 4 a 21 commissioner's decision which is 22 regarding Carl Pallidino and it's 23 decision number 17147. 24 (Whereupon, Commissioner's 25 decision number 17147 was marked as</p>	30	<p>1 Proceedings 2 exhibits, fine. 3 Otherwise, we'll have a 4 discussion about its admissibility. 5 And when, like, some exhibits have to 6 come in through a witness, for 7 example. These types of exhibits that 8 we've just been given, don't. So -- 9 MR. SHAW: I would rather wait 10 for her presentation -- 11 THE ARBITRATOR: Fine. 12 MR. SHAW: -- of her case for 13 those exhibits. 14 THE ARBITRATOR: Okay. 15 MR. SHAW: And anything that may 16 inform opening statements in terms of 17 decisional law or statutes or policy, 18 that seems to me to be appropriate at 19 this time. 20 MS. WALSH: The only reason I 21 would like to get these in now because 22 they could be used on 23 cross-examination. 24 THE ARBITRATOR: Well, 25 cross-examination is not the issue.</p>

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31	<p>1 Proceedings</p> <p>2 The question is are they going to be</p> <p>3 referred to in your opening statement.</p> <p>4 Then let's get them in. If they are</p> <p>5 not, then they come in through your</p> <p>6 case.</p> <p>7 MS. WALSH: Do you have any</p> <p>8 objections?</p> <p>9 MR. SHAW: I'll look at them</p> <p>10 later.</p> <p>11 MS. WALSH: I would prefer that</p> <p>12 they be looked at --</p> <p>13 THE ARBITRATOR: So why don't we</p> <p>14 do this? Why don't we segregate. We</p> <p>15 will do the opening statement for the</p> <p>16 District and then we'll do the opening</p> <p>17 for the Respondent.</p> <p>18 And you can decide whether you</p> <p>19 want to approach those exhibits before</p> <p>20 you make your opening statement or</p> <p>21 after.</p> <p>22 MS. WALSH: Well, I would rather</p> <p>23 have them in now.</p> <p>24 THE ARBITRATOR: We don't need</p> <p>25 them now because it's Mr. Shaw's</p>	33	<p>1 Proceedings</p> <p>2 being conducted pursuant to</p> <p>3 Educational Law Section 1709 paragraph</p> <p>4 18 that allows for the Board of</p> <p>5 Education to remove one of its members</p> <p>6 for official misconduct.</p> <p>7 The nature of the two charges</p> <p>8 relate to matters of confidentiality</p> <p>9 in different areas of Board service.</p> <p>10 The first charge deals with the duty</p> <p>11 of confidentiality not to disclose</p> <p>12 critical labor relations information</p> <p>13 to others.</p> <p>14 And in this particular case the</p> <p>15 disclosure occurred by sending</p> <p>16 sensitive critical information from a</p> <p>17 Board executive session to the labor</p> <p>18 relations specialist employed by NYSUT</p> <p>19 to assist the Tuxedo Teachers</p> <p>20 Association in its negotiations with</p> <p>21 the School District.</p> <p>22 The nature of the information</p> <p>23 disclosed was of the most sensitive</p> <p>24 kind on the most critical issue</p> <p>25 involved in an impasse in the</p>
32	<p>1 Proceedings</p> <p>2 statement.</p> <p>3 MS. WALSH: Well, I'd rather</p> <p>4 give my opening statement at the same</p> <p>5 time as Mr. Shaw.</p> <p>6 THE ARBITRATOR: Yes. That's</p> <p>7 what I'm saying.</p> <p>8 MS. WALSH: All right. Then,</p> <p>9 when --</p> <p>10 THE ARBITRATOR: You don't give</p> <p>11 them at the same time. You go in</p> <p>12 sequence.</p> <p>13 MS. WALSH: Yes.</p> <p>14 THE ARBITRATOR: So the first</p> <p>15 sequence is the Petitioner. So we</p> <p>16 will have the opening statement of the</p> <p>17 Petitioner. And then we'll have the</p> <p>18 opening statement of the Respondent.</p> <p>19 And you can decide if you want your</p> <p>20 exhibits in before you begin to speak.</p> <p>21 Okay? Mr. Shaw.</p> <p>22 MR. SHAW: Okay. Thank you,</p> <p>23 Madam President. On behalf of the</p> <p>24 District, this case involves two</p> <p>25 charges of official misconduct and is</p>	34	<p>1 Proceedings</p> <p>2 negotiations between the parties.</p> <p>3 And to that end, we refer in</p> <p>4 part to Board Policy 1301 that</p> <p>5 addresses the issue of powers and</p> <p>6 responsibilities of the Board of</p> <p>7 Education, its code of ethics, and the</p> <p>8 statement therein regarding</p> <p>9 confidential information that reads:</p> <p>10 "An officer or employee shall</p> <p>11 not disclose confidential information</p> <p>12 acquired by him or her in the course</p> <p>13 of his or her official duties or use</p> <p>14 such information to further his or her</p> <p>15 personal interest."</p> <p>16 So that it is written in the</p> <p>17 disjunctive and it is the first part</p> <p>18 of that provision that's at issue in</p> <p>19 these proceedings.</p> <p>20 With respect to the second</p> <p>21 charge, the issue involves a breach of</p> <p>22 trust of the other trustees and a</p> <p>23 disregard for the importance of</p> <p>24 maintaining the confidentiality of a</p> <p>25 report that was issued by a consultant</p>

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35	<p>1 Proceedings</p> <p>2 to the Board of Education, that,</p> <p>3 Margaret Muenkel. And Margaret</p> <p>4 Muenkel was reviewing whether or not</p> <p>5 there was a disclosure of personally</p> <p>6 identifiable student information to</p> <p>7 third parties what the circumstances</p> <p>8 were and the extent to which there</p> <p>9 might have been a breach of</p> <p>10 confidentiality.</p> <p>11 And that consultant,</p> <p>12 Ms. Muenkel, reviewed a span of time</p> <p>13 and activities from a meeting</p> <p>14 regarding the needs of the child,</p> <p>15 through activities of whistle blowers</p> <p>16 approaching a Board trustee and into</p> <p>17 activities of a Board executive</p> <p>18 session held on July 8, 2021.</p> <p>19 The Muenkel report was a highly</p> <p>20 confidential report for two reasons:</p> <p>21 It constituted, in part, a student</p> <p>22 record and in part, an investigative</p> <p>23 report regarding employees and</p> <p>24 trustees of the District and whether</p> <p>25 or not their conduct was in any way</p>	37	<p>1 Proceedings</p> <p>2 provisions of law and regulations.</p> <p>3 You have Section 87 of the Public</p> <p>4 Officers Law that deals with the</p> <p>5 manner in which reports may be</p> <p>6 confidential and may be withheld from</p> <p>7 the public.</p> <p>8 Reports may be withheld to the</p> <p>9 extent that revealing it or at least</p> <p>10 parts would constitute an unwarranted</p> <p>11 invasion of personal privacy. Here it</p> <p>12 would relate back to those individuals</p> <p>13 that I mentioned earlier in this</p> <p>14 statement.</p> <p>15 There is also the issue of the</p> <p>16 report constituting what would be</p> <p>17 referred to as an intra-agency</p> <p>18 document of that small group of</p> <p>19 persons who could shield information</p> <p>20 from the public yet be privy to it.</p> <p>21 So that would include the Board</p> <p>22 members, the superintendent of</p> <p>23 schools, their counsel and their</p> <p>24 consultants. And in this regard, by</p> <p>25 not adopting the report as a final</p>
36	<p>1 Proceedings</p> <p>2 wrongful and with a goal towards</p> <p>3 shoring up the maintenance of</p> <p>4 confidentiality with respect</p> <p>5 particularly to student records.</p> <p>6 This charge involves a very</p> <p>7 precise protocol for handing out and</p> <p>8 receiving back from Board members in</p> <p>9 an executive session of this report.</p> <p>10 The purpose at that time was for</p> <p>11 the Board members to review the report</p> <p>12 as Board members. Not as parents, not</p> <p>13 as a parent of a student who might</p> <p>14 have been part of the report, but</p> <p>15 rather, from the perspective of the</p> <p>16 management of the District and to the</p> <p>17 extent that the report was not adopted</p> <p>18 as a final agency determination, it</p> <p>19 was appropriate for it to be reviewed,</p> <p>20 returned, and not distributed beyond</p> <p>21 the protocols that were established.</p> <p>22 Those protocols will be testified to</p> <p>23 by the District superintendent of</p> <p>24 schools.</p> <p>25 You have before you particular</p>	38	<p>1 Proceedings</p> <p>2 agency determination, it should have</p> <p>3 been held confidential and there</p> <p>4 should not have been a withholding of</p> <p>5 the return of the report by the</p> <p>6 trustee who understood as the others</p> <p>7 did that it was to be returned. It</p> <p>8 was to be confidential. And that was</p> <p>9 the breach that is involved in the</p> <p>10 second charge.</p> <p>11 To paint the legal framework for</p> <p>12 these proceedings, there have been a</p> <p>13 number of Commissioners' decisions</p> <p>14 regarding breach of confidentiality of</p> <p>15 executive session and also sanctions</p> <p>16 for doing that.</p> <p>17 Many of them dealt with</p> <p>18 revealing information regarding</p> <p>19 collective bargaining. The Hoeffer</p> <p>20 case that Ms. Walsh has already</p> <p>21 introduced into evidence, is a</p> <p>22 critical one where a Board member was</p> <p>23 removed.</p> <p>24 The case of Nett and Arby that</p> <p>25 followed shortly thereafter,</p>

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39	<p>1 Proceedings</p> <p>2 reiterated the same principles. And</p> <p>3 I'd say that the seminal case now is</p> <p>4 one of the Carl Pallidino cases, Board</p> <p>5 of Ed of the school district, the City</p> <p>6 of Buffalo, decision number 17147.</p> <p>7 And I'd like to read into the</p> <p>8 record to create the framework for</p> <p>9 these proceedings, certain excerpts</p> <p>10 from this decision. So under</p> <p>11 applicable law, it says: "A member of</p> <p>12 the Board of Education or a school</p> <p>13 officer may be removed from office</p> <p>14 pursuant to Education Law 306 when it</p> <p>15 is proven to the satisfaction of the</p> <p>16 commissioner that the Board member or</p> <p>17 school officer has engaged in a</p> <p>18 willful violation or a neglect of duty</p> <p>19 under the education law, or has</p> <p>20 willfully disobeyed a decision, order,</p> <p>21 rule or regulation of the Board of</p> <p>22 Regents or Commissioner of Education.</p> <p>23 The Board member's actions must</p> <p>24 have been intentional and with the</p> <p>25 wrongful purpose.</p>	41	<p>1 Proceedings</p> <p>2 violates General Municipal Law Section</p> <p>3 805(a)(1b) and may constitute grounds</p> <p>4 for a board member's removal from</p> <p>5 office pursuant to Section 306.</p> <p>6 And Section 306 is the</p> <p>7 commissioner's analog to the board's</p> <p>8 authority under 1709(18) to remove a</p> <p>9 Board member. There again that Nett</p> <p>10 and Raby is cited. Appeal of Balin is</p> <p>11 cited, decision 14474. And other</p> <p>12 cases are cited there as well.</p> <p>13 With respect to the issue of</p> <p>14 willfulness, in the Pallidino case,</p> <p>15 there was specific reference made as</p> <p>16 to how a Board might ascertain</p> <p>17 willfulness. And here it says, the</p> <p>18 commissioner: "I further find that</p> <p>19 Respondent's violation of law was</p> <p>20 willful. To be considered willful,</p> <p>21 the Board member's actions must have</p> <p>22 been intentional and with a wrongful</p> <p>23 purpose. It is beyond dispute that</p> <p>24 Respondent's disclosure was</p> <p>25 intentional, as Respondent admits that</p>
40	<p>1 Proceedings</p> <p>2 In the course of its duties, the</p> <p>3 school board is required to discuss</p> <p>4 and debate difficult and sensitive</p> <p>5 issues including personnel matters,</p> <p>6 collective bargaining tactics and</p> <p>7 litigation strategies.</p> <p>8 The law specifically recognizes</p> <p>9 the delicacy of these matters by</p> <p>10 permitting them to be discussed in</p> <p>11 private as an exception to the general</p> <p>12 public nature of such meetings. See</p> <p>13 Public Officer's Law Section 105.</p> <p>14 The purpose of this exception is</p> <p>15 to enable public officers to</p> <p>16 deliberate freely and speak frankly in</p> <p>17 ways they might not if the discussions</p> <p>18 were held in public. And that citing</p> <p>19 to the Nett and Raby case which is</p> <p>20 decision 15315.</p> <p>21 The decision also states: "It</p> <p>22 is well settled that a Board member's</p> <p>23 disclosure of confidential information</p> <p>24 obtained at a properly convened</p> <p>25 executive session of a Board meeting</p>	42	<p>1 Proceedings</p> <p>2 he wrote the article and submitted it</p> <p>3 for publication.</p> <p>4 "The record further supports a</p> <p>5 finding that Respondent's</p> <p>6 intentionality disregarded his legal</p> <p>7 duty to safeguard confidential</p> <p>8 materials, thus acting with a wrongful</p> <p>9 purpose."</p> <p>10 So when the Board reviews</p> <p>11 perhaps with you, the proofs in this</p> <p>12 case, it is our expectation there will</p> <p>13 be a finding that the trustee at issue</p> <p>14 issued and emailed to the labor</p> <p>15 relations specialist. That wasn't</p> <p>16 done by a simple mistake. It was done</p> <p>17 through a couple of steps where she</p> <p>18 implicitly should have known what she</p> <p>19 was doing and intent may be inferred.</p> <p>20 More importantly, is the</p> <p>21 gravitas of what happened: Sending</p> <p>22 the critical issue in bargaining to</p> <p>23 the labor relations specialist for</p> <p>24 NYSUT when the parties were on the</p> <p>25 verge of an impasse in the</p>

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43	<p>1 Proceedings</p> <p>2 negotiations over that issue.</p> <p>3 And with respect to the second</p> <p>4 charge, again in a duly convened</p> <p>5 executive session, directions were</p> <p>6 given about release and return of the</p> <p>7 document.</p> <p>8 And you will hear testimony</p> <p>9 about how this trustee refused to</p> <p>10 return it, was pursued by the</p> <p>11 superintendent who was under the duty</p> <p>12 to collect and retain. Time and again</p> <p>13 she would not return it to him.</p> <p>14 Based upon those events in that</p> <p>15 sequence, this Board of Education</p> <p>16 voted. And it is in evidence, the</p> <p>17 voting, to bring about this hearing.</p> <p>18 And it is the position on behalf of</p> <p>19 the District that findings of guilt</p> <p>20 should be found upon both charges and</p> <p>21 that it would support a termination</p> <p>22 from service on the Board of</p> <p>23 Education. Thank you.</p> <p>24 THE ARBITRATOR: All right,</p> <p>25 Ms. Walsh?</p>	45	<p>1 Proceedings</p> <p>2 MR. SHAW: Yes.</p> <p>3 MS. WALSH: That is. Exhibit B</p> <p>4 are the charges which is also Joint 2.</p> <p>5 MR. SHAW: Is that being marked</p> <p>6 as RB then?</p> <p>7 THE ARBITRATOR: Yes.</p> <p>8 MS. WALSH: Exhibit C is the</p> <p>9 response to the charges.</p> <p>10 THE ARBITRATOR: Which is joint</p> <p>11 3. Right.</p> <p>12 MR. SHAW: I'd like it to be</p> <p>13 noted that Joint 3 is the answer but</p> <p>14 any content in it is not testimony.</p> <p>15 It is just part of the answer.</p> <p>16 THE ARBITRATOR: D is the</p> <p>17 special meeting agenda.</p> <p>18 MS. WALSH: June 18 special</p> <p>19 meeting agenda.</p> <p>20 THE ARBITRATOR: Mine says</p> <p>21 September 24.</p> <p>22 MS. WALSH: Okay.</p> <p>23 THE ARBITRATOR: September 24,</p> <p>24 special meeting agenda. That's the</p> <p>25 one you gave me as D.</p>
44	<p>1 Proceedings</p> <p>2 MS. WALSH: I would first like</p> <p>3 to admit A to G.</p> <p>4 (Whereupon, Respondent's</p> <p>5 Exhibits A-G were received and</p> <p>6 admitted into evidence, as of this</p> <p>7 date.)</p> <p>8 THE ARBITRATOR: Do you want to</p> <p>9 tell us what they are first?</p> <p>10 MS. WALSH: Yes. Well, let me--</p> <p>11 THE ARBITRATOR: What is RA?</p> <p>12 MS. WALSH: The first one --</p> <p>13 THE ARBITRATOR: And Mr. Shaw,</p> <p>14 do you have any objection to these?</p> <p>15 MR. SHAW: I do have relevance</p> <p>16 objections to two parts.</p> <p>17 MS. WALSH: Exhibit A is the</p> <p>18 resolution.</p> <p>19 THE ARBITRATOR: RA is one page.</p> <p>20 MS. WALSH: Right, it is</p> <p>21 appointing Carol Hoffman to conduct</p> <p>22 the hearing pursuant to District</p> <p>23 Policy 1315.</p> <p>24 THE ARBITRATOR: So this is the</p> <p>25 same as Joint 1?</p>	46	<p>1 Proceedings</p> <p>2 MS. WALSH: We will get that in</p> <p>3 through testimony.</p> <p>4 THE ARBITRATOR: So we are</p> <p>5 holding on D.</p> <p>6 MR. SHAW: ID only.</p> <p>7 THE ARBITRATOR: We don't have</p> <p>8 anything in ID. Because I've been</p> <p>9 told what I've been given is</p> <p>10 incorrect. You are going to give me</p> <p>11 the correct one.</p> <p>12 (Pause)</p> <p>13 MS. WALSH: Exhibit F is an</p> <p>14 email chain.</p> <p>15 (Pause)</p> <p>16 THE ARBITRATOR: What happened</p> <p>17 to E? E says violation --</p> <p>18 MS. WALSH: E is a letter dated</p> <p>19 July 20, 2021 to David Shaw from</p> <p>20 Marion Walsh.</p> <p>21 THE ARBITRATOR: Ready for F?</p> <p>22 MR. SHAW: No.</p> <p>23 MS. WALSH: E is a letter to</p> <p>24 David Shaw from counsel, dated July</p> <p>25 20, 2021.</p>

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47	<p>1 Proceedings</p> <p>2 MR. SHAW: I don't believe this</p> <p>3 should be part of this hearing. It</p> <p>4 may be relevant to the other</p> <p>5 proceedings.</p> <p>6 MS. WALSH: Then I'll admit them</p> <p>7 through witnesses.</p> <p>8 THE ARBITRATOR: So we have E is</p> <p>9 for ID. D is for ID only, not in</p> <p>10 evidence yet.</p> <p>11 (Whereupon, Special meeting</p> <p>12 agenda dated 6/18 was marked as</p> <p>13 Respondent's Exhibit D for</p> <p>14 identification, as of this date.)</p> <p>15 (Whereupon, Letter dated 7/20/21</p> <p>16 was marked as Respondent's Exhibit E</p> <p>17 for identification, as of this date.)</p> <p>18 THE ARBITRATOR: And you are</p> <p>19 going to give me F now?</p> <p>20 MS. WALSH: Uh-huh. And F is</p> <p>21 correspondence that Counsel had with</p> <p>22 the Hearing Officer on the</p> <p>23 proceedings. F is the email exchange.</p> <p>24 (Whereupon, Email correspondence</p> <p>25 was marked as Respondent's Exhibit F</p>	49	<p>1 Proceedings</p> <p>2 stipulation that email exchanges that</p> <p>3 are relevant to these issues shall be</p> <p>4 received in evidence, as long as they</p> <p>5 are authenticated by each of the</p> <p>6 parties, so we can avoid a lot of</p> <p>7 waste of time.</p> <p>8 So while I might otherwise</p> <p>9 object to this, I would imagine that</p> <p>10 it would be received into evidence at</p> <p>11 a later time.</p> <p>12 THE ARBITRATOR: Through a</p> <p>13 witness?</p> <p>14 MR. SHAW: Do you intend to put</p> <p>15 this in through a witness otherwise?</p> <p>16 MS. WALSH: Yes.</p> <p>17 MR. SHAW: Who would that be?</p> <p>18 MS. WALSH: That would be</p> <p>19 Mrs. Ziegelbaur.</p> <p>20 MR. SHAW: So let's wait for</p> <p>21 her.</p> <p>22 THE ARBITRATOR: All right.</p> <p>23 MR. SHAW: And put this in then.</p> <p>24 THE ARBITRATOR: So then this is</p> <p>25 for ID. D, E and F, ID only.</p>
48	<p>1 Proceedings</p> <p>2 for identification, as of this date.)</p> <p>3 MR. SHAW: Okay, G is dealing</p> <p>4 particularly with the demands for</p> <p>5 recusal, a stated conflict of</p> <p>6 interest. Again I don't think this</p> <p>7 is -- F?</p> <p>8 MS. WALSH: We want to do F</p> <p>9 first.</p> <p>10 MR. SHAW: Sorry.</p> <p>11 THE ARBITRATOR: What is your</p> <p>12 position on F, Mr. Shaw?</p> <p>13 MR. SHAW: Can you tell me what</p> <p>14 you are looking at as F?</p> <p>15 THE ARBITRATOR: Well, it's</p> <p>16 called an email exchange but I'm</p> <p>17 trying to see where it ends.</p> <p>18 MR. SHAW: Who is it the</p> <p>19 recipient and what's the date and</p> <p>20 time?</p> <p>21 THE ARBITRATOR: At the</p> <p>22 beginning it says from Dorothy</p> <p>23 Ziegelbaur to Dan Castricone.</p> <p>24 MR. SHAW: Okay, now with</p> <p>25 respect to email exchanges, I'd like a</p>	50	<p>1 Proceedings</p> <p>2 MS. WALSH: And G is one page.</p> <p>3 (Pause)</p> <p>4 THE ARBITRATOR: What is the</p> <p>5 relevance of this?</p> <p>6 MS. WALSH: We think it's</p> <p>7 important to document the</p> <p>8 correspondence that we had regarding</p> <p>9 the prehearing conference and the</p> <p>10 request.</p> <p>11 MR. SHAW: We believe that the</p> <p>12 issue regarding the recusal or a</p> <p>13 conflict of interest would be one</p> <p>14 before the Commissioner and is before</p> <p>15 the Commissioner and should not be</p> <p>16 part of these proceedings. We object.</p> <p>17 THE ARBITRATOR: I would sustain</p> <p>18 the objection on this particular item,</p> <p>19 because this is conversation between</p> <p>20 the three of us about the way this</p> <p>21 hearing is going to be conducted.</p> <p>22 It is not factual, it is not</p> <p>23 going to bear upon any decision-making</p> <p>24 because it's not before the Board as a</p> <p>25 question of fact. It's a</p>

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51	<p>1 Proceedings</p> <p>2 conversation.</p> <p>3 And if we are going to be taking</p> <p>4 star chamber conversations and turning</p> <p>5 them into transcripts and submitting</p> <p>6 them, that is completely</p> <p>7 inappropriate.</p> <p>8 MS. WALSH: I respectfully note</p> <p>9 that this procedure is important and I</p> <p>10 did have some concerns about the</p> <p>11 procedure of the hearing as well as</p> <p>12 the adjournment; and I do believe that</p> <p>13 this should be documented as far as</p> <p>14 our request for recusal as well as the</p> <p>15 legal authority here and as well as</p> <p>16 the charges because this deals with</p> <p>17 1709(18) so I do think it's important</p> <p>18 to document that we have these</p> <p>19 objections before the hearing.</p> <p>20 THE ARBITRATOR: All right. The</p> <p>21 objection is overruled. You'll have</p> <p>22 plenty of opportunity throughout the</p> <p>23 hearing to document all of these</p> <p>24 points. But to document the</p> <p>25 conversation between the Hearing</p>	53	<p>1 Proceedings</p> <p>2 MS. WALSH: But it does reserve</p> <p>3 rights on appeal and show that --</p> <p>4 THE ARBITRATOR: And you've done</p> <p>5 that with the case to the</p> <p>6 Commissioner. And whatever document</p> <p>7 this is, I only got one page out of</p> <p>8 four to begin with so...</p> <p>9 (Pause)</p> <p>10 THE ARBITRATOR: Do you have any</p> <p>11 other exhibits, Ms. Walsh, or are you</p> <p>12 ready to proceed with your opening</p> <p>13 statement?</p> <p>14 MS. WALSH: I will have others,</p> <p>15 I may have others in the course of</p> <p>16 testimony but right now that is all</p> <p>17 for now.</p> <p>18 THE ARBITRATOR: Go ahead.</p> <p>19 MS. WALSH: Okay. Again good</p> <p>20 morning, trustees and Madam Hearing</p> <p>21 Officer as well as Mr. Shaw. And as</p> <p>22 I've noted I'm Marion Walsh, attorney</p> <p>23 for Ms. Ziegelbaur.</p> <p>24 This Board has taken a drastic</p> <p>25 step which is the word of the</p>
52	<p>1 Proceedings</p> <p>2 Officer and Counsel, to try to make it</p> <p>3 evidence, we are not going to allow</p> <p>4 that.</p> <p>5 MS. WALSH: I think it should be</p> <p>6 Hearing Officer Exhibit then, if</p> <p>7 nothing else. Because in most</p> <p>8 hearings that I've conducted there is,</p> <p>9 the correspondence is documented with</p> <p>10 Hearing Officer exhibits.</p> <p>11 THE ARBITRATOR: Okay.</p> <p>12 MS. WALSH: But we can decide it</p> <p>13 later.</p> <p>14 THE ARBITRATOR: Well, we have</p> <p>15 already decided it. I'm not taking it</p> <p>16 as an exhibit. I'm not putting any</p> <p>17 limits on your ability to discuss it,</p> <p>18 argue it, put it in a brief, get it in</p> <p>19 through a witness.</p> <p>20 But I don't think it is</p> <p>21 appropriate to have a conversation</p> <p>22 with me and the Counsel in as an</p> <p>23 exhibit. It's not a factual, it</p> <p>24 doesn't assist the Board in making a</p> <p>25 decision. And that's why we are here.</p>	54	<p>1 Proceedings</p> <p>2 Commissioner to press charges against</p> <p>3 a Board trustee duly elected to this</p> <p>4 position. Your stakeholders have</p> <p>5 supported Ms. Ziegelbaur twice and</p> <p>6 absent some egregious breach of that</p> <p>7 trust, this board cannot justify her</p> <p>8 removal.</p> <p>9 Indeed, as Mr. Shaw noted citing</p> <p>10 Commissioner's decision, official</p> <p>11 misconduct requires a demonstration of</p> <p>12 substantial and willful violation of</p> <p>13 the law. In fact, I'll read again the</p> <p>14 same case he quoted.</p> <p>15 That: "A member of a Board of</p> <p>16 Education or a school officer may be</p> <p>17 removed to the satisfaction of the</p> <p>18 Commissioner, when a board member or a</p> <p>19 school officer has engaged in willful,</p> <p>20 a willful violation or neglect of duty</p> <p>21 under the Education Law or has</p> <p>22 willfully obeyed a decision, order,</p> <p>23 rule or regulation of the Board of</p> <p>24 Regents or Commissioner of Education."</p> <p>25 Well, here, in contrast to the</p>

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55	<p>1 Proceedings</p> <p>2 Pallidino case where there was no</p> <p>3 inadvertent disclosure but an admitted</p> <p>4 disclosure, any rational review of the</p> <p>5 relevant facts conclusively</p> <p>6 demonstrates that Mr. Castricone and</p> <p>7 the Board in pressing these charges</p> <p>8 cannot meet the burden of proof.</p> <p>9 While I do believe that each of</p> <p>10 you do understand the gravity of this</p> <p>11 proceeding and is, I hope, approaching</p> <p>12 it with trepidation and concern, the</p> <p>13 absurd nature of the charges</p> <p>14 undermines that wish.</p> <p>15 Should you move ahead, as one</p> <p>16 might expect in this (inaudible))</p> <p>17 you'll need to justify to the</p> <p>18 residents of this District that you</p> <p>19 removed one of their elected</p> <p>20 representatives and a former Board</p> <p>21 president due to her emailed response</p> <p>22 to the superintendent and her desire</p> <p>23 not against any written policy to hold</p> <p>24 onto and retain confidentially, a</p> <p>25 report prepared for the rest of the</p>	57	<p>1 Proceedings</p> <p>2 account.</p> <p>3 And for reasons that I cannot</p> <p>4 explain, he used, he sent the note and</p> <p>5 email from an email address directly</p> <p>6 linked to a negotiator for the</p> <p>7 teachers' union. There is a term for</p> <p>8 this and some of us may use this. I</p> <p>9 think it is called delegation of an</p> <p>10 email, that when some of us perhaps we</p> <p>11 want to use our emails from one email</p> <p>12 rather than from many, we may combine</p> <p>13 our email addresses. Here I don't</p> <p>14 know why the superintendent combined</p> <p>15 his email address with the union</p> <p>16 representative.</p> <p>17 So Ms. Ziegelbaur received an</p> <p>18 email from the superintendent. And</p> <p>19 when each of you received the email,</p> <p>20 how many of you did see the content</p> <p>21 and the name at the end of the email</p> <p>22 and concluded that the email was from</p> <p>23 the superintendent without noting the</p> <p>24 name of the sender.</p> <p>25 So when Mrs. Ziegelbaur</p>
56	<p>1 Proceedings</p> <p>2 Board and for her.</p> <p>3 There is no allegation that</p> <p>4 anything in the report was released</p> <p>5 inappropriately. As to the first</p> <p>6 charge, this charge, upon evidence</p> <p>7 that you will hear, it completely</p> <p>8 collapses when examined. You will</p> <p>9 hear and see testimony into the</p> <p>10 exhibits and hear testimony, that on</p> <p>11 August 9, the new superintendent sent</p> <p>12 an email to the Board that expressly</p> <p>13 sought a response. The email</p> <p>14 concludes: "Please confirm with me</p> <p>15 that you can make it." Signed from</p> <p>16 Jeff. "Thank you, Jeff."</p> <p>17 Ms. Ziegelbaur responded two</p> <p>18 hours later. The problem in this</p> <p>19 email was not in the content of what</p> <p>20 Ms. Ziegelbaur wrote; the fundamental</p> <p>21 error occurred from the</p> <p>22 superintendent's wife's decision in</p> <p>23 that he used not his own email, not an</p> <p>24 official email through the school</p> <p>25 District, not his own personal gmail</p>	58	<p>1 Proceedings</p> <p>2 responded to that email she was</p> <p>3 responding to the note from Jeff, from</p> <p>4 the superintendent. It's still</p> <p>5 baffling to me and remains to hear</p> <p>6 testimony why he would use the NYSED</p> <p>7 email.</p> <p>8 And I'm sure that Ms. Ziegelbaur</p> <p>9 was not the only one who failed to</p> <p>10 notice this perplexing discrepancy</p> <p>11 when she hit either reply or reply</p> <p>12 all. But clearly, she was responding</p> <p>13 to Jeff. In fact, her note said "to</p> <p>14 Jeff."</p> <p>15 Two other points are relevant to</p> <p>16 this inadvertent email. First, no one</p> <p>17 can credibly argue, let's say, that</p> <p>18 Ms. Ziegelbaur willfully disclosed</p> <p>19 confidential information. She</p> <p>20 addressed the response to the</p> <p>21 superintendent.</p> <p>22 Further when the error was</p> <p>23 brought to her attention, she</p> <p>24 expressly stated, "it was a hundred</p> <p>25 percent not my intention to include</p>

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59	<p>1 Proceedings</p> <p>2 Terry on this email thread. That is</p> <p>3 evidence that this was not a willful</p> <p>4 disclosure. This was not her</p> <p>5 intention.</p> <p>6 Second, what confidential</p> <p>7 information that was so important</p> <p>8 about the District's negotiations and</p> <p>9 bargaining with Tuxedo did she</p> <p>10 disclose?</p> <p>11 I can't answer that but</p> <p>12 arguable the only negotiation position</p> <p>13 revealed that the consideration of</p> <p>14 discussing the potential use of the</p> <p>15 mediator and the relative positions of</p> <p>16 the two sides concerning the eight</p> <p>17 period school day was publicly known</p> <p>18 and far from confidential.</p> <p>19 But the main focus should be on</p> <p>20 the inadvertent nature. This is not a</p> <p>21 willful violation and cannot be.</p> <p>22 As to charge two, Ms. Ziegelbaur</p> <p>23 as a public official does continue to</p> <p>24 hold onto a report by Margaret</p> <p>25 Muenkel. As Mr. Shaw noted, the</p>	61	<p>1 Proceedings</p> <p>2 information and report that having</p> <p>3 been duly commissioned.</p> <p>4 Now here, Ms. Ziegelbaur could</p> <p>5 not review this report in the 10</p> <p>6 minutes given. I have noted that Ms.</p> <p>7 Muenkel was paid for by the District,</p> <p>8 perhaps, and the District retained her</p> <p>9 perhaps in order to provide each</p> <p>10 member of the board with information</p> <p>11 relevant. This potential value to</p> <p>12 board members does not end after 20 or</p> <p>13 30 minutes in executive session,</p> <p>14 despite what the superintendent says.</p> <p>15 And every trustee may hold onto and</p> <p>16 retain the information following a</p> <p>17 closed session, so long as they</p> <p>18 protect the confidentiality of the</p> <p>19 report and any privacy issues related</p> <p>20 to District employees.</p> <p>21 Allowing trustees to depart with</p> <p>22 the information for, later for</p> <p>23 consideration if they wish to do, so</p> <p>24 better ensures their abilities to</p> <p>25 conduct duties responsibly and</p>
60	<p>1 Proceedings</p> <p>2 School District retained Ms. Muenkel</p> <p>3 to conduct a review and provide a</p> <p>4 report to the Board.</p> <p>5 Each Board member received the</p> <p>6 report in his or her official</p> <p>7 capacity. In receiving and retaining</p> <p>8 the report, Ms. Ziegelbaur has not</p> <p>9 violated board policy. She has not</p> <p>10 violated the law and regulations, she</p> <p>11 has not violated any written protocol.</p> <p>12 There is no release of</p> <p>13 confidential information, no</p> <p>14 allegation of that. And no one has</p> <p>15 charged her with such a disclosure.</p> <p>16 Nothing in Board policy or general</p> <p>17 municipal law or public officers law</p> <p>18 requires a trustee to return documents</p> <p>19 reviewed in executive session. Do you</p> <p>20 have to keep it confidential? Yes.</p> <p>21 Board policy, as noted, requires</p> <p>22 her to keep it confidential and she</p> <p>23 has. And just to note, all of you as</p> <p>24 Board trustees have a duty to the</p> <p>25 public, have a duty to consider</p>	62	<p>1 Proceedings</p> <p>2 diligently with accurate information.</p> <p>3 Moreover, contrary to Mr. Shaw's</p> <p>4 statement, if this report again, which</p> <p>5 Ms. Ziegelbaur has not released,</p> <p>6 contains information on staff.</p> <p>7 However, it's important to note that</p> <p>8 the Muenkel report does not contain</p> <p>9 invasive private confidential</p> <p>10 information on District employees or</p> <p>11 officers such that any disclosure upon</p> <p>12 information and belief would</p> <p>13 constitute an unwarranted invasion of</p> <p>14 personal privacy.</p> <p>15 In general, I understand</p> <p>16 pursuant to New York Public Officers</p> <p>17 Law 89(2)(b), public officers and</p> <p>18 employees enjoy a lesser degree of</p> <p>19 privacy than others, for it has been</p> <p>20 found in various contexts that those</p> <p>21 individuals are require to be more</p> <p>22 accountable than others.</p> <p>23 The charge, as Mr. Shaw noted,</p> <p>24 suggests again that the, as I stated,</p> <p>25 that the return of the report was</p>

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63	<p>1 Proceedings</p> <p>2 necessary to protect the privacy</p> <p>3 rights of the individual. And again,</p> <p>4 for the reasons I read under Public</p> <p>5 Officers Law, this is nonsense and</p> <p>6 insulting to all of you as trustees.</p> <p>7 The very nature of your position</p> <p>8 here means that you will receive</p> <p>9 delicate information about District</p> <p>10 personnel on a regular basis. You</p> <p>11 will be asked to assess teachers at</p> <p>12 times and judge the actions of staff.</p> <p>13 The protection of privacy, not</p> <p>14 like, not in the keeping of</p> <p>15 confiscation of information, of which</p> <p>16 this board is entitled, but rather</p> <p>17 than ensuring that trustees understand</p> <p>18 what information is confidential and</p> <p>19 the importance of protecting it.</p> <p>20 I understand you have all had</p> <p>21 training in regard with Ms. Harris,</p> <p>22 which we appreciate. But nothing in</p> <p>23 that training that you received,</p> <p>24 nothing in the law, nothing in any</p> <p>25 regulation, nothing in any policy</p>	65	<p>1 Proceedings</p> <p>2 Mrs. Ziegelbaur.</p> <p>3 Now collectively as a Board, it</p> <p>4 would be certainly necessary for your</p> <p>5 duty and necessary for the students of</p> <p>6 this District to use this opportunity</p> <p>7 to end this trend of the past few</p> <p>8 months and come together. Five of you</p> <p>9 see and understand, I believe that</p> <p>10 this proceeding is nonsense and it</p> <p>11 will only damage the both the School</p> <p>12 District and the legitimacy of the</p> <p>13 Board. Indeed as we noted, the motion</p> <p>14 permitting this proceeding highlights</p> <p>15 its farcical nature; the District</p> <p>16 failed to provide notice on the</p> <p>17 correct policy; and also failed to</p> <p>18 properly notice the September 24</p> <p>19 special meeting under open meeting</p> <p>20 laws, and then have to settle issues</p> <p>21 that state to a policy that does not</p> <p>22 exist.</p> <p>23 There can only be one rational</p> <p>24 outcome. You must decide by</p> <p>25 preponderance of the evidence, whether</p>
64	<p>1 Proceedings</p> <p>2 states that a trustee must return a</p> <p>3 document given in executive session,</p> <p>4 provided he or she keeps it</p> <p>5 confidential.</p> <p>6 Now the record in evidence you</p> <p>7 will hear today and these charges do</p> <p>8 not even come close to the standard</p> <p>9 required by Mrs. Ziegelbaur and does</p> <p>10 not show official misconduct or</p> <p>11 substantial violation of Board of</p> <p>12 Education duties as the Commissioner</p> <p>13 requires.</p> <p>14 As I've noted to you when I</p> <p>15 spoke to the public, I understand how</p> <p>16 difficult your position is here. I</p> <p>17 sat on the Board for nine years and I</p> <p>18 think your service is laudable.</p> <p>19 And however, I do think right</p> <p>20 now it's very, you have to do this</p> <p>21 through the lens of the Commissioner</p> <p>22 to consider whether there was a</p> <p>23 willful and substantial violation.</p> <p>24 And you are taking a drastic step in</p> <p>25 removing and even proposing to remove</p>	66	<p>1 Proceedings</p> <p>2 mistakenly sending an email from an</p> <p>3 email that says "from the</p> <p>4 superintendent" and retaining a</p> <p>5 (Inaudible) for review, constitutes</p> <p>6 official misconduct.</p> <p>7 The Commissioner has alerted</p> <p>8 that removal is noted as a drastic</p> <p>9 step and the standard is high with a</p> <p>10 public official.</p> <p>11 Just to give you some examples:</p> <p>12 An appeal of a bill decision 14785</p> <p>13 2002. That's just one example. The</p> <p>14 Commissioner did uphold removal after</p> <p>15 substantiated charges that a board</p> <p>16 member called a meeting chair an</p> <p>17 idiot. Solicited apparent false</p> <p>18 charges of sexual misconduct against</p> <p>19 the District's employee and more.</p> <p>20 In the appeal of April Jones</p> <p>21 White, the Commissioner upheld the</p> <p>22 removal of a board member after</p> <p>23 substantiating charge that a board</p> <p>24 member embezzled \$8,000. And that is</p> <p>25 decision 15195.</p>

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67	<p>1 Proceedings</p> <p>2 So in short, even in short, even</p> <p>3 the Pallidino case cited there were</p> <p>4 not just two violations and they were</p> <p>5 not inadvertent. So there is no basis</p> <p>6 here for this removal and the charges</p> <p>7 here do not justify those involved,</p> <p>8 Ms. Ziegelbaur, who has faithfully</p> <p>9 served this District since 2016.</p> <p>10 THE ARBITRATOR: All right.</p> <p>11 That concludes opening statements and</p> <p>12 at this point we will begin receiving</p> <p>13 testimony.</p> <p>14 MR. SHAW: I have to go find the</p> <p>15 first witness.</p> <p>16 (Pause)</p> <p>17 THE ARBITRATOR: Let's break for</p> <p>18 five minutes.</p> <p>19 (Recess taken)</p> <p>20 THE ARBITRATOR: Ready, first</p> <p>21 witness?</p> <p>22 MR. SHAW: I call Jeffrey White.</p> <p>23</p> <p>24 JEFFREY WHITE,</p> <p>25 called as a witness, having been first</p>	69	<p>1 Proceedings</p> <p>2 A Upon arrival at the District.</p> <p>3 MS. WALSH: Objection. I'm not</p> <p>4 sure of its relevance and order here.</p> <p>5 This is not related to the charges</p> <p>6 until we establish what specifically</p> <p>7 they are related to.</p> <p>8 THE ARBITRATOR: Mr. Shaw, would</p> <p>9 you like to be heard on that?</p> <p>10 MR. SHAW: I would, yes. So one</p> <p>11 of the charges deals with revealing</p> <p>12 the District's negotiations position.</p> <p>13 I'm laying a foundation for the</p> <p>14 superintendent as having been involved</p> <p>15 with the negotiations, knowledgeable</p> <p>16 about the critical issues and</p> <p>17 understanding the import of the email</p> <p>18 that forms the basis preferred in</p> <p>19 Charge 1.</p> <p>20 MS. WALSH: I think before we</p> <p>21 have any discussion on this, there has</p> <p>22 to be a discussion about this email,</p> <p>23 because the, it has to be a willful</p> <p>24 violation.</p> <p>25 THE ARBITRATOR: This is</p>
68	<p>1 Proceedings</p> <p>2 duly sworn by the Hearing Officer, was</p> <p>3 examined and testified as follows:</p> <p>4 THE ARBITRATOR: You are sworn.</p> <p>5 Your witness.</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. SHAW:</p> <p>8 Q Good morning, Mr. White. Please</p> <p>9 make sure you face the stenographer, the</p> <p>10 panel and Ms. Hoffman.</p> <p>11 THE ARBITRATOR: It is hard, I</p> <p>12 know, with all of us.</p> <p>13 Q What is your position in the</p> <p>14 District?</p> <p>15 A Superintendent of schools.</p> <p>16 Q And how long have you served in</p> <p>17 that capacity?</p> <p>18 A Since July 1, 2021.</p> <p>19 Q As superintendent, have you been</p> <p>20 involved in the negotiations with the</p> <p>21 Tuxedo Teachers Association also known as</p> <p>22 the TTA?</p> <p>23 A Yes.</p> <p>24 Q And when did you first become</p> <p>25 involved?</p>	70	<p>1 Proceedings</p> <p>2 testimony that's going to become part</p> <p>3 of the factual basis for any</p> <p>4 determination that is made. I'm going</p> <p>5 to overrule the objection and let the</p> <p>6 witness answer.</p> <p>7 MR. SHAW: Do you want me to</p> <p>8 read back the question?</p> <p>9 (Record read)</p> <p>10 A Yes.</p> <p>11 Q When did you arrive?</p> <p>12 A July 1, 2021.</p> <p>13 Q And did you meet with the Board</p> <p>14 to discuss how to progress the</p> <p>15 negotiations towards settlement with the</p> <p>16 TTA?</p> <p>17 A Yes.</p> <p>18 MS. WALSH: I think objection on</p> <p>19 leading. You are giving him the</p> <p>20 answer in the question.</p> <p>21 THE ARBITRATOR: Ms. Walsh, we</p> <p>22 are never going to get through this if</p> <p>23 we don't allow some basis for why we</p> <p>24 are here. The question about were you</p> <p>25 present at a meeting is a legitimate</p>

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71	<p>1 Proceedings</p> <p>2 question.</p> <p>3 MS. WALSH: That wasn't the</p> <p>4 question but I understand.</p> <p>5 THE ARBITRATOR: Well, we are</p> <p>6 trying to get to what happened here</p> <p>7 so --</p> <p>8 Q When did you meet with the Board</p> <p>9 regarding the TTA negotiations?</p> <p>10 A July 28, I think it was.</p> <p>11 Q What year?</p> <p>12 A 2021.</p> <p>13 Q And do you recall what part of</p> <p>14 the meeting you met with them?</p> <p>15 A In executive session. Any</p> <p>16 discussion of the contract would be in</p> <p>17 executive session.</p> <p>18 MR. SHAW: I'd like to have this</p> <p>19 document marked as District Exhibit 5,</p> <p>20 these are minutes of the Board</p> <p>21 meetings of July 28, 2021.</p> <p>22 (Whereupon, Board meeting</p> <p>23 minutes dated 7/28/21 was marked as</p> <p>24 District Exhibit 5 for identification,</p> <p>25 as of this date.)</p>	73	<p>1 Proceedings</p> <p>2 MR. SHAW: We believe it's</p> <p>3 appropriate to have the entirety of</p> <p>4 the minutes. It's not going to create</p> <p>5 a voluminous part of the record and it</p> <p>6 makes sense to receive it as such.</p> <p>7 THE ARBITRATOR: All right.</p> <p>8 I'll accept this over objection. D5</p> <p>9 is in evidence.</p> <p>10 (Whereupon, District Exhibit 5</p> <p>11 was received and admitted into</p> <p>12 evidence, as of this date.)</p> <p>13 Q Do you recall what issue or</p> <p>14 issues were holding up settlement when you</p> <p>15 met with the Board on July 28?</p> <p>16 A The issue at the time was the 9</p> <p>17 period day. There was a discussion about</p> <p>18 an 8 period day and the practice of a 9</p> <p>19 period day with an X period; which would</p> <p>20 make it a 10 period day. Only the X</p> <p>21 period would be shorter than a regular</p> <p>22 period. 30 minutes versus 38 minutes.</p> <p>23 Q And in the executive session</p> <p>24 were there discussions about how to go</p> <p>25 about accomplishing the number of periods</p>
72	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: Minutes of</p> <p>3 Board meeting July 28, 2021.</p> <p>4 Q I'd ask the witness to review</p> <p>5 what is marked for identification and in</p> <p>6 evidence as District Exhibit 5. Can you</p> <p>7 identify that for the record?</p> <p>8 A Board agenda for July 28, 2021.</p> <p>9 Q Is that a true and accurate copy</p> <p>10 of the same?</p> <p>11 A Yes.</p> <p>12 MR. SHAW: I'd like it to be</p> <p>13 received in evidence.</p> <p>14 THE ARBITRATOR: Any objection,</p> <p>15 Ms. Walsh?</p> <p>16 MS. WALSH: I have not reviewed</p> <p>17 this to compare what is on the website</p> <p>18 but I -- I don't know what the</p> <p>19 relevance is behind, except for page</p> <p>20 5, perhaps.</p> <p>21 THE ARBITRATOR: You'll see the</p> <p>22 relevance on page 1 with the reference</p> <p>23 to an executive session.</p> <p>24 MS. WALSH: But it's entered</p> <p>25 into page 5.</p>	74	<p>1 Proceedings</p> <p>2 during the day?</p> <p>3 A Yes. We discussed about</p> <p>4 bringing in a consultant to help us with</p> <p>5 that, and we talked about an 8 period day,</p> <p>6 9 period day, X period day.</p> <p>7 Whether we should agree with the</p> <p>8 union to look at other options or to</p> <p>9 possibly go to mediation. And I was</p> <p>10 recommending to the Board that we not go</p> <p>11 to mediation. I wanted to have a</p> <p>12 resolution with the union, a favorable</p> <p>13 resolution that all parties would be happy</p> <p>14 with.</p> <p>15 Q By the way, are you appearing</p> <p>16 here under subpoena today?</p> <p>17 A Yes. I'm appearing under</p> <p>18 subpoena. That's right.</p> <p>19 Q And who was present in that</p> <p>20 executive session on July 28?</p> <p>21 A All of the members of the Board</p> <p>22 of Ed.</p> <p>23 Q And that would have included</p> <p>24 Ms. Ziegelbaur?</p> <p>25 A Yes.</p>

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75	<p>1 Proceedings</p> <p>2 Q And was there a subsequent plan</p> <p>3 to meet with the TTA bargaining team?</p> <p>4 A Yes.</p> <p>5 Q Do you recall when that was</p> <p>6 planned for?</p> <p>7 A I believe it was August 12,</p> <p>8 2021.</p> <p>9 Q Prior to that meeting did you</p> <p>10 receive any email communications that</p> <p>11 would have been relevant to that meeting?</p> <p>12 A I received an email from the</p> <p>13 LRS. The NYSUT representative.</p> <p>14 THE ARBITRATOR: The labor</p> <p>15 relations specialist.</p> <p>16 MR. SHAW: I'd like to mark the</p> <p>17 next exhibit as District Exhibit 6.</p> <p>18 (Whereupon, email string between</p> <p>19 C. Broderick and Superintendent was</p> <p>20 marked as District Exhibit 6 for</p> <p>21 identification, as of this date.)</p> <p>22 MS. WALSH: I have an objection</p> <p>23 to this. We have a different copy.</p> <p>24 Let me compare it with our copy first.</p> <p>25 MR. SHAW: Okay.</p>	77	<p>1 Proceedings</p> <p>2 email. What's being represented by each</p> <p>3 of the correspondences?</p> <p>4 A So, in order to help out the</p> <p>5 negotiations and help things move forward,</p> <p>6 the TTA, Tuxedo Teachers' Association, had</p> <p>7 asked to meet with the Board directly to</p> <p>8 express their view on the 9 period day.</p> <p>9 And they wanted to make a</p> <p>10 presentation before the Board so</p> <p>11 Mrs. Broderick had sent me an email link</p> <p>12 to invite people to this meeting. If they</p> <p>13 couldn't be in-person in the District, at</p> <p>14 least they could access it remotely.</p> <p>15 Q And at the bottom of the first</p> <p>16 page, there is a reference to a "ladies</p> <p>17 and gentlemen." Who authored the "ladies</p> <p>18 and gentlemen"?</p> <p>19 A That's me and I basically was</p> <p>20 addressing the Board of Education letting</p> <p>21 them know that teachers wanted an</p> <p>22 opportunity to address the Board about the</p> <p>23 9 period day. But it appears that we had,</p> <p>24 the soonest we could do it was Thursday,</p> <p>25 August 12, 2021 at 5:30. And I just</p>
76	<p>1 Proceedings</p> <p>2 (Pause)</p> <p>3 THE ARBITRATOR: How would you</p> <p>4 describe this, Mr. Shaw?</p> <p>5 MR. SHAW: This is an email</p> <p>6 string between Cairenn Broderick, the</p> <p>7 NYSUT labor relations specialist, and</p> <p>8 the superintendent of schools and also</p> <p>9 involving Dorothy Ziegelbaur as one of</p> <p>10 the correspondents on the email.</p> <p>11 (Pause)</p> <p>12 THE ARBITRATOR: Ms. Walsh, any</p> <p>13 objection?</p> <p>14 MS. WALSH: No. I have an email</p> <p>15 that has the next reply but I have no</p> <p>16 objection to this.</p> <p>17 THE ARBITRATOR: Okay. This is</p> <p>18 in evidence, that is District 6, email</p> <p>19 exchange dated Monday, August 9 on</p> <p>20 top.</p> <p>21 (Whereupon, District Exhibit 6</p> <p>22 was received and admitted into</p> <p>23 evidence, as of this date.)</p> <p>24 Q Mr. White, I'd like you to just</p> <p>25 walk us through from back to front of this</p>	78	<p>1 Proceedings</p> <p>2 wanted confirmation that they could make</p> <p>3 it, that the Board members could make the</p> <p>4 meeting.</p> <p>5 Q And of the ladies and gentlemen,</p> <p>6 who would have been the recipients of that</p> <p>7 communication from you?</p> <p>8 A The members of the Board of</p> <p>9 Education.</p> <p>10 Q And the email above from Dorothy</p> <p>11 Ziegelbaur, did you receive that email</p> <p>12 from her?</p> <p>13 A No, I got it from Cairenn</p> <p>14 Broderick, the LRS.</p> <p>15 Q And at the very top of this</p> <p>16 exhibit, is that what you are referring to</p> <p>17 as to how you received this document?</p> <p>18 A Yes.</p> <p>19 Q Looking at the content of</p> <p>20 Ms. Ziegelbaur's email that seems to be</p> <p>21 indicated for you, does that reflect the</p> <p>22 content of executive session discussions</p> <p>23 on July 28?</p> <p>24 A This was some of the discussion,</p> <p>25 yes.</p>

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79	<p>1 Proceedings</p> <p>2 Q For the record, who is Cairenn</p> <p>3 Broderick?</p> <p>4 A Caierenn Broderick is the labor</p> <p>5 relations specialist for NYSUT, New York</p> <p>6 State United Teachers, who represents the</p> <p>7 Tuxedo Teachers' Association.</p> <p>8 Q And was she a member of their</p> <p>9 bargaining team?</p> <p>10 A Yes.</p> <p>11 Q And at the table?</p> <p>12 A Yes.</p> <p>13 Q Was Careinn Broderick invited</p> <p>14 into the board's executive session on July</p> <p>15 28, 2021?</p> <p>16 A No. August 12.</p> <p>17 Q And to your knowledge, did the</p> <p>18 Board authorize Ms. Ziegelbaur to address</p> <p>19 Ms. Broderick in an email of this nature?</p> <p>20 MS. WALSH: Objection.</p> <p>21 A Not that I know, no.</p> <p>22 MS. WALSH: Objection.</p> <p>23 THE ARBITRATOR: What's your</p> <p>24 objection?</p> <p>25 MS. WALSH: Because she is</p>
80	<p>1 Proceedings</p> <p>2 responding to Mr. White.</p> <p>3 THE ARBITRATOR: He is allowed</p> <p>4 to ask the question.</p> <p>5 MS. WALSH: It's a leading</p> <p>6 question and I'm objecting.</p> <p>7 THE ARBITRATOR: All right. And</p> <p>8 it is an administrative hearing, it's</p> <p>9 not a court of law. There's some</p> <p>10 leeway. What we are trying to do is</p> <p>11 get to the crux of this.</p> <p>12 Q So do you recall the question or</p> <p>13 I could repeat it?</p> <p>14 A Could you repeat it?</p> <p>15 Q Yes. To your knowledge, did the</p> <p>16 Board authorize Ms. Ziegelbaur to</p> <p>17 correspond with the NYSUT representative?</p> <p>18 A Not to my knowledge.</p> <p>19 Q Do you know whether or not the</p> <p>20 Board engaged an IT expert to review the</p> <p>21 emails in order to make a determination</p> <p>22 about its issuance?</p> <p>23 A Yes. I'm aware that the Board</p> <p>24 engaged someone to do that. Yes.</p> <p>25 MR. SHAW: I'd ask that the</p>
81	<p>1 Proceedings</p> <p>2 following be marked for identification</p> <p>3 as District 7.</p> <p>4 (Whereupon, investigation report</p> <p>5 was marked as District Exhibit 7 for</p> <p>6 identification, as of this date.)</p> <p>7 THE ARBITRATOR: Report of</p> <p>8 investigation.</p> <p>9 Q I'd ask the witness if, you can</p> <p>10 identify this document for the record?</p> <p>11 A This is the report of</p> <p>12 investigation. About the email. About</p> <p>13 the email in question.</p> <p>14 Q Is that a true and accurate copy</p> <p>15 of what you received as a report to the</p> <p>16 District?</p> <p>17 A Yes.</p> <p>18 MR. SHAW: I'd ask that this be</p> <p>19 received in evidence as District 7.</p> <p>20 MS. WALSH: Objection. This is</p> <p>21 an un-authored document and undated</p> <p>22 document. It is purporting to give</p> <p>23 expert opinion on emails; and to the</p> <p>24 extent this is being offered in</p> <p>25 evidence, I'd like to reserve the</p>
82	<p>1 Proceedings</p> <p>2 right to subpoena and bring the actual</p> <p>3 author of the investigation because</p> <p>4 Mr. White does not have the technical</p> <p>5 expertise to authenticate it or to</p> <p>6 explain it and it is prejudicial to</p> <p>7 give a document that is un-authored,</p> <p>8 undated and --</p> <p>9 THE ARBITRATOR: Do you want to</p> <p>10 do a voir dire?</p> <p>11 MS. WALSH: I can't do it of</p> <p>12 Mr. White because he is not the author</p> <p>13 and --</p> <p>14 THE ARBITRATOR: You can ask him</p> <p>15 how he came by this.</p> <p>16 MS. WALSH: Mr. Shaw can</p> <p>17 probably do that but I would then like</p> <p>18 to bring in the author of this</p> <p>19 document to get a better understanding</p> <p>20 of it. I can't cross-examine</p> <p>21 Mr. White on this because --</p> <p>22 THE ARBITRATOR: No, you can't</p> <p>23 cross-examine Mr. White on it but you</p> <p>24 can ask him if he knows how it was</p> <p>25 prepared, who requested it, where it</p>

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83	<p>1 Proceedings</p> <p>2 came from, who the person was and do a</p> <p>3 voir dire on it; so at least we</p> <p>4 understand where it came from.</p> <p>5 MS. WALSH: I think Mr. Shaw was</p> <p>6 going to do that but I would still</p> <p>7 object.</p> <p>8 MR. SHAW: Well, if I may, this</p> <p>9 is from the company Corporate</p> <p>10 Screening and Investigative Group.</p> <p>11 And this is an administrative hearing</p> <p>12 and under the Court's decision in the</p> <p>13 Radoff case, which is 99 Appellate</p> <p>14 Division second 840, the Court has</p> <p>15 ruled in proceedings such as this.</p> <p>16 Let's consider this in the sense</p> <p>17 a hearsay document. You give it the</p> <p>18 weight that it can be afforded in</p> <p>19 terms of its conclusion. And opposing</p> <p>20 counsel has every right to subpoena</p> <p>21 the representative from Corporate</p> <p>22 Screening and Investigative Group, LLC</p> <p>23 to give more background regarding the</p> <p>24 report. But it should be received</p> <p>25 into evidence in an administrative</p>	85	<p>1 Proceedings</p> <p>2 MR. SHAW: October 14, 2021.</p> <p>3 MS. WALSH: All right. Do you</p> <p>4 have the name?</p> <p>5 MR. SHAW: Yes. Tony Olivo.</p> <p>6 THE ARBITRATOR: O-l-i-v-o?</p> <p>7 MR. SHAW: Yes. He is director</p> <p>8 of investigations, Corporate Screening</p> <p>9 and Investigative Group, LLC.</p> <p>10 MS. WALSH: And again I have a</p> <p>11 strong objection to this; even in an</p> <p>12 administrative hearing there has to be</p> <p>13 basic time to -- this should be a</p> <p>14 signed and authored document.</p> <p>15 THE ARBITRATOR: I understand</p> <p>16 that. All your objections are duly</p> <p>17 noted on the record. We will accept</p> <p>18 it for what it's worth and Ms. Walsh,</p> <p>19 you have the right to subpoena</p> <p>20 Mr. Olivo if you feel that it is</p> <p>21 necessary.</p> <p>22 DIRECT EXAMINATION (Continued)</p> <p>23 BY MR. SHAW:</p> <p>24 Q Mr. White, do you know whether</p> <p>25 or not you would be included in an email</p>
84	<p>1 Proceedings</p> <p>2 hearing.</p> <p>3 THE ARBITRATOR: Do we know who</p> <p>4 wrote this?</p> <p>5 MR. SHAW: This came from its</p> <p>6 principal, Tony Olivo. O-l-i-v-o.</p> <p>7 THE ARBITRATOR: And who engaged</p> <p>8 this company to do this report?</p> <p>9 MR. SHAW: This was engaged</p> <p>10 through our office on behalf of the</p> <p>11 District.</p> <p>12 MS. WALSH: Can I ask another</p> <p>13 question, when was this received?</p> <p>14 MR. SHAW: October 14, 2021.</p> <p>15 MS. WALSH: Did the Board</p> <p>16 authorize this?</p> <p>17 MR. SHAW: This was part of what</p> <p>18 I understood my charge to be in terms</p> <p>19 of presenting the case and being able</p> <p>20 to prove the charges.</p> <p>21 THE ARBITRATOR: All right. I'm</p> <p>22 going to accept it for what it's</p> <p>23 worth.</p> <p>24 MS. WALSH: What is the date on</p> <p>25 this?</p>	86	<p>1 Proceedings</p> <p>2 that is addressed to BOE in Tuxedo, Board</p> <p>3 of Ed?</p> <p>4 MS. ZIEGELBAUR: I'm sorry can</p> <p>5 you repeat that, I can't hear.</p> <p>6 MS. WALSH: I think the question</p> <p>7 was --</p> <p>8 MR. SHAW: I asked him if he</p> <p>9 knows whether or not he would be a</p> <p>10 recipient of the matter addressed to</p> <p>11 BOE Tuxedo.</p> <p>12 Q What is on the copy line of your</p> <p>13 email, of the Ziegelbaur email?</p> <p>14 A Normally, I am not part of the</p> <p>15 BOE email chain.</p> <p>16 THE ARBITRATOR: You are or you</p> <p>17 are not?</p> <p>18 THE WITNESS: I am not.</p> <p>19 A It is just the Board of Ed and</p> <p>20 the district clerk, to my knowledge.</p> <p>21 Q In reviewing the report, what</p> <p>22 was your understanding with respect to</p> <p>23 Ms. Ziegelbaur's ability to issue that</p> <p>24 email to the Board of Education members?</p> <p>25 MS. WALSH: Objection. I don't</p>

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87	<p>1 Proceedings</p> <p>2 understand the question. Ability of</p> <p>3 her to --</p> <p>4 MR. SHAW: Can we have it read</p> <p>5 back and get a ruling on it?</p> <p>6 THE ARBITRATOR: Yes, I'd like</p> <p>7 to hear the question back.</p> <p>8 (Record read)</p> <p>9 THE ARBITRATOR: Okay. Do you</p> <p>10 understand the question, Mr. White?</p> <p>11 THE WITNESS: Yes.</p> <p>12 THE ARBITRATOR: I'm going to</p> <p>13 let him answer it.</p> <p>14 A Well, according to this report,</p> <p>15 it seems to say that she would have to</p> <p>16 have specifically sent it to the people</p> <p>17 that it was sent to.</p> <p>18 MS. WALSH: Objection to that</p> <p>19 answer. It seems to say --</p> <p>20 A It says that. The report says</p> <p>21 that.</p> <p>22 THE ARBITRATOR: Do you have</p> <p>23 another question, Mr. Shaw?</p> <p>24 MS. WALSH: Can you read that</p> <p>25 back? The answer, if you don't mind.</p>	89	<p>1 Proceedings</p> <p>2 superintendent?</p> <p>3 A Yes.</p> <p>4 Q And did the Board appoint an</p> <p>5 investigator to review that matter?</p> <p>6 A Yes.</p> <p>7 Q Who was that?</p> <p>8 A Mrs. Margaret Muenkel.</p> <p>9 Mrs. Meunkel is an investigator. She is a</p> <p>10 retired assistant superintendent for human</p> <p>11 resources at the Arlington School</p> <p>12 District. She had a bunch of experience</p> <p>13 with doing such investigations.</p> <p>14 Q And did Ms. Muenkel report back</p> <p>15 to the Board?</p> <p>16 A Yes, she did.</p> <p>17 Q And when was that?</p> <p>18 A Trying to remember the date on</p> <p>19 that. That was September, I believe it</p> <p>20 was September 15th.</p> <p>21 Q 2021?</p> <p>22 A 2021, yes.</p> <p>23 Q And what was the nature of her</p> <p>24 report?</p> <p>25 A She summarized her findings from</p>
88	<p>1 Proceedings</p> <p>2 MR. SHAW: I don't mind if you</p> <p>3 read it back.</p> <p>4 (Record read)</p> <p>5 Q Breaking it down, to your</p> <p>6 knowledge, if Ms. Ziegelbaur was pressing</p> <p>7 Reply, would pressing Reply have sent it</p> <p>8 to the Board of Education members?</p> <p>9 A Apparently -- no, it says the</p> <p>10 opposite here. It says it had to be typed</p> <p>11 in.</p> <p>12 Q And you testified before that</p> <p>13 didn't get sent to you; am I correct?</p> <p>14 A No, I didn't get this. I got it</p> <p>15 from Cairenn Broderick on Monday, August</p> <p>16 9.</p> <p>17 MR. SHAW: May I have those</p> <p>18 back, please?</p> <p>19 THE WITNESS: Sure.</p> <p>20 (Handing)</p> <p>21 Q Did there come a time when the</p> <p>22 Board authorized an investigation into</p> <p>23 alleged violation of student privacy</p> <p>24 rights regarding personally identifiable</p> <p>25 information, during the time you served as</p>	90	<p>1 Proceedings</p> <p>2 the investigation in the report.</p> <p>3 Q And did the Board take any</p> <p>4 action with respect to the report?</p> <p>5 A No. No action was taken on that</p> <p>6 report.</p> <p>7 Q Was the report reviewed by the</p> <p>8 members of the Board of Education?</p> <p>9 A Yes. It was.</p> <p>10 Q When did that happen?</p> <p>11 A On September 15 in executive</p> <p>12 session.</p> <p>13 Q And was it a duly convened</p> <p>14 executive session?</p> <p>15 A It was.</p> <p>16 Q And were there protocols for the</p> <p>17 review for that executive session?</p> <p>18 A Yes. I mentioned to the Board</p> <p>19 --</p> <p>20 MS. WALSH: Objection.</p> <p>21 Definition of protocol. Is it a</p> <p>22 written protocol and what is the</p> <p>23 definition of protocol mean.</p> <p>24 MR. SHAW: We will find out --</p> <p>25 (Inaudible)</p>

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91	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: Ms. Walsh, let</p> <p>3 the witness explain what, if any,</p> <p>4 protocols existed.</p> <p>5 A The protocols was I mentioned to</p> <p>6 all the Board that I was going to be</p> <p>7 handing out a report to them, that they</p> <p>8 would be reading their report, their names</p> <p>9 would be written or are written on top of</p> <p>10 the record. And at the end I would be</p> <p>11 collecting all the reports back and they</p> <p>12 would be destroyed.</p> <p>13 Q And did all of the Board members</p> <p>14 return the report to you at the end of the</p> <p>15 review period?</p> <p>16 A Not all of them, no.</p> <p>17 Q Who among them did not?</p> <p>18 A Mrs. Ziegelbaur.</p> <p>19 Q Did you demand for its return?</p> <p>20 A I asked that she return the</p> <p>21 report on multiple occasions, yes.</p> <p>22 Q That evening?</p> <p>23 A Yes.</p> <p>24 Q And were your demands acceded to</p> <p>25 by Ms. Ziegelbaur?</p>	93	<p>1 Proceedings</p> <p>2 personally identifiable information?</p> <p>3 A Yes.</p> <p>4 Q And was there any information</p> <p>5 that in your opinion would have been</p> <p>6 private information about employees and</p> <p>7 trustees of the District?</p> <p>8 A Yes.</p> <p>9 Q And would that have been true</p> <p>10 regarding multiple persons?</p> <p>11 A Yes.</p> <p>12 MR. SHAW: I'd like to go off</p> <p>13 the record for a moment and excuse the</p> <p>14 witness, if that's okay?</p> <p>15 THE ARBITRATOR: Okay, step</p> <p>16 outside, please.</p> <p>17 THE WITNESS: Okay.</p> <p>18 (The witness left the room)</p> <p>19 THE ARBITRATOR: We are off the</p> <p>20 record.</p> <p>21 (Discussion off the record)</p> <p>22 (The witness returned)</p> <p>23 (Whereupon, M. Muenkel report</p> <p>24 was marked as District Exhibit 8 for</p> <p>25 identification, as of this date.)</p>
92	<p>1 Proceedings</p> <p>2 A No.</p> <p>3 Q To date, has she returned a</p> <p>4 copy, the copy reviewed by her in</p> <p>5 executive session, to the District?</p> <p>6 A No, I never got it back.</p> <p>7 Q And to your knowledge, did</p> <p>8 anyone in the District get it back?</p> <p>9 A No.</p> <p>10 Q Do you know what student</p> <p>11 personally identifiable information is?</p> <p>12 A Yes.</p> <p>13 Q And just generally, what would</p> <p>14 it be, to your knowledge?</p> <p>15 A Any kind of information that</p> <p>16 would identify specific students.</p> <p>17 Q As it relates to their education</p> <p>18 in the District?</p> <p>19 A Yes. Absolutely.</p> <p>20 Q And would that in your</p> <p>21 understanding be a student record?</p> <p>22 A That would be.</p> <p>23 Q And in your review of the</p> <p>24 report, was there information in the</p> <p>25 report that would constitute student</p>	94	<p>1 Proceedings</p> <p>2 MR. SHAW: So at this point we</p> <p>3 have identified the Muenkel report for</p> <p>4 purposes of the hearing; it is not in</p> <p>5 evidence yet. And it is the</p> <p>6 District's position that it should be</p> <p>7 for in-camera review during the star</p> <p>8 chamber proceedings.</p> <p>9 MS. WALSH: We have an</p> <p>10 objection.</p> <p>11 THE ARBITRATOR: All right. So</p> <p>12 let's continue.</p> <p>13 MR. SHAW: No further questions</p> <p>14 on direct.</p> <p>15 THE ARBITRATOR: So now you are</p> <p>16 subject to cross-examination.</p> <p>17 MS. WALSH: I'm going to ask for</p> <p>18 a 15-minute break, 10 minutes if it is</p> <p>19 too long.</p> <p>20 THE ARBITRATOR: Okay.</p> <p>21 10-minute break and then we will have</p> <p>22 cross-examination.</p> <p>23 (Recess taken at 12:28 p.m.)</p> <p>24</p> <p>25</p>

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95	1 Proceedings 2 AFTERNOON SESSION 3 12:52 p.m. 4 5 THE ARBITRATOR: Ms. Walsh, 6 whenever you are ready. 7 CROSS-EXAMINATION 8 BY MS. WALSH: 9 Q Thank you. Thank you for your 10 patience, everyone. Thank you, Mr. White 11 for being available. Mr. White, I just 12 wanted to confirm, you testified you began 13 with the District on July 1, 2021? 14 A Yes. 15 Q And who was Board president at 16 that point? 17 A On July 1 it was 18 Mrs. Ziegelbaur. 19 Q And upon becoming superintendent 20 assuming the role, did you review Board 21 policies? 22 A I did. 23 Q Did you develop any of your own 24 policies? 25 A Not at that time.	97	1 Proceedings 2 session at any point? 3 MR. SHAW: Objection. 4 Relevance. The charges are about 5 discussions in executive sessions that 6 were revealed. 7 THE ARBITRATOR: Would you like 8 to be heard, Ms. Walsh? 9 MS. WALSH: Yes, thank you. The 10 charges are related to the release of 11 confidential information related to 12 the Taylor Law and related to the 8 to 13 9 day period. And to the extent these 14 are indeed confidential, I want to 15 know the genesis of them. And I want 16 to understand, the Board has the right 17 to understand what was actually 18 discussed at length. 19 THE ARBITRATOR: Ms. Walsh, I'll 20 overrule the objection. You can 21 answer the question. 22 MS. WALSH: Could you repeat the 23 question? 24 (Record record) 25 A The length of the day? I think
96	1 Proceedings 2 Q I'll come back to that. On 3 District 5 you testified about this 4 executive session entered into on July 5 28th. Now, you testified that there were 6 negotiations going on and one of main 7 issues was the 8 to 9 day period? 8 A Yes. That's right. 9 Q Could you explain what that 10 means to you, what were the issues with 11 the 8 to 9 day period? 12 THE ARBITRATOR: The 8 to 9 13 period day. 14 A There had been a concern on the 15 Board when I arrived that the periods that 16 the students were at their classes were 17 not lengthy enough. They were not of a 18 sufficient length. So they wanted to go 19 from a 37/38 period day up to -- 20 MS. ZIEGELBAUR: Minute. 21 THE WITNESS: I'm sorry. 22 Minute. Thank you. 23 A (Continuing) up to a 43 or 24 44-minute day. Period, I mean. 25 Q And was this discussed at public	98	1 Proceedings 2 it had. Yes. 3 Q And you would agree that that is 4 an important, would be an important topic 5 of discussion for students and parents to 6 be part of, correct? 7 A Yes. 8 Q Okay. And indeed, the proposed 9 consultant to be hired, could you just 10 explain what the role of the consultant 11 was supposed to be? 12 A Well, we had a consultant, I'm 13 trying to remember now back on July 28 -- 14 yes, we were supposed to hire a consultant 15 to come in and help us figure out because 16 the District is very unique in its size, 17 help us figure out what would be the most 18 optimal length of a period and the length 19 of the day for the school. 20 Q So was the consultant hired for 21 union negotiations? 22 A Was the consultant to be hired 23 for union negotiations? 24 Q I'm sorry. The question is was 25 the consultant an expert in Taylor Law

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99	<p>1 Proceedings</p> <p>2 negotiating or was the consultant an</p> <p>3 educator?</p> <p>4 MR. SHAW: I'm going to object.</p> <p>5 The witness is testifying that there</p> <p>6 had been discussion about securing a</p> <p>7 consultant.</p> <p>8 The question is was the</p> <p>9 consultant to be secured as an adjunct</p> <p>10 to the negotiations process; that</p> <p>11 would certainly be a legitimate</p> <p>12 question.</p> <p>13 THE ARBITRATOR: Let's start</p> <p>14 with that. Was the consultant --</p> <p>15 MS. WALSH: I can ask that but I</p> <p>16 would also want to know what the, who</p> <p>17 the union proposed consultant was.</p> <p>18 But I'll start with that.</p> <p>19 Q Was the consultant, proposed</p> <p>20 consultant, to be hired to assist with</p> <p>21 negotiations?</p> <p>22 A Well, the District had had a</p> <p>23 consultant that was helping with</p> <p>24 negotiations. And I did ask the District</p> <p>25 if, the Board, if we could bring that</p>	101	<p>1 Proceedings</p> <p>2 proposed to hire a consultant, was</p> <p>3 actually public information then?</p> <p>4 A Yes.</p> <p>5 Q And in fact, do you know if the</p> <p>6 discussion about an 8 period day -- I'm</p> <p>7 sorry. Is the 8 period day, is there any</p> <p>8 public information on that that you are</p> <p>9 aware of?</p> <p>10 A Is there any --</p> <p>11 Q In fact, let me. I'll rephrase</p> <p>12 it. Doesn't the union contract now in</p> <p>13 fact testify to an 8 period day?</p> <p>14 A I believe it is a 9 period day.</p> <p>15 Q A 9 period. Does it -- and is</p> <p>16 that a public document?</p> <p>17 A Yes.</p> <p>18 Q Okay. Isn't it true that there</p> <p>19 is an 8 period day option in the union</p> <p>20 contract?</p> <p>21 MR. SHAW: I'm going to object</p> <p>22 to the relevance. The charges were</p> <p>23 about what was discussed in executive</p> <p>24 session strategically and was it</p> <p>25 revealed.</p>
100	<p>1 Proceedings</p> <p>2 consultant back because that consultant,</p> <p>3 in addition to being a retired</p> <p>4 superintendent and very experienced in</p> <p>5 negotiations, also was very experienced</p> <p>6 with scheduling and length of day.</p> <p>7 Q And was the discussion about a</p> <p>8 proposed consultant discussed in an open</p> <p>9 public meeting?</p> <p>10 A Yes.</p> <p>11 Q Okay. And what was that</p> <p>12 discussion, if you recall, when did it</p> <p>13 occur?</p> <p>14 A There was some controversy over</p> <p>15 the particular consultant that I was</p> <p>16 recommending at that time. It was a</p> <p>17 consultant that had been with the District</p> <p>18 previously helping with the negotiations.</p> <p>19 So I wanted that same consultant</p> <p>20 since they had the history of the</p> <p>21 negotiations. And had the unique</p> <p>22 background that I was hoping to get that</p> <p>23 consultant back.</p> <p>24 Q Okay. So the fact that you were</p> <p>25 going to hire a consultant, was actually</p>	102	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: I understand</p> <p>3 the distinction. I also understand</p> <p>4 Ms. Walsh's questions about what was</p> <p>5 discussed in public versus exec</p> <p>6 session. So I'm going to allow it a</p> <p>7 bit further.</p> <p>8 Q I'm sorry. Did you answer the</p> <p>9 question?</p> <p>10 A Could you ask that again?</p> <p>11 Q I think the last question was</p> <p>12 isn't it true that there was an 8 period</p> <p>13 day option in the existing contract?</p> <p>14 A I believe that is true, yes.</p> <p>15 Q And isn't it true that the union</p> <p>16 contract is a public document?</p> <p>17 A Yes.</p> <p>18 Q So, now, was there any</p> <p>19 discussion, if you recall, about mediation</p> <p>20 that the public knew about?</p> <p>21 A Not that I know of. Not about</p> <p>22 mediation.</p> <p>23 Q Was there any disclosure to the</p> <p>24 public about negotiations with the union?</p> <p>25 A Just that we were in</p>

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1 Proceedings
2 negotiations.
3 Q Okay. So this is just -- I want
4 to turn your attention to what's marked,
5 it is actually admitted as District 6.
6 MS. WALSH: I wanted to give the
7 witness a copy.
8 MR. SHAW: Can the witness be
9 handed the exhibit.
10 (Handing)
11 Q Do you see in the middle of the
12 page where Ms. Ziegelbaur historically
13 read an email to you. And it says that
14 "we have an 8 period day as an option via
15 the existing contract." Is that
16 confidential information?
17 A No.
18 MR. SHAW: I'm going to object
19 to cherry picking the content. The
20 document speaks for itself.
21 THE ARBITRATOR: I'm going to --
22 well, let me hear from you first,
23 Ms. Walsh. The documents do speak for
24 themselves.
25 MS. WALSH: Mr. White made the

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1 Proceedings
2 argument in his testimony that in this
3 email there was confidential
4 information released, in his opinion.
5 And it impeded negotiations.
6 It is certainly relevant to go
7 through each line of it and to see
8 what is indeed confidential and what
9 isn't. It goes to the heart of the
10 part of what the proceeding is. Very
11 important.
12 MR. SHAW: That's not a relevant
13 probe to take clause by clause and
14 trying to get an answer; that clause
15 alone isn't necessarily confidential;
16 it's the context of the entire
17 writing.
18 THE ARBITRATOR: I understand.
19 And Ms. Walsh, in her opening
20 statement indicated that she's been a
21 Board member. So she knows the
22 difference between what's in the
23 contract, what's public and what's
24 discussed as strategy in an executive
25 session, which is what we are talking

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1 Proceedings
2 about here.
3 So if you are asking him if the
4 document says something, we already
5 know what it says.
6 MS. WALSH: But he claimed it
7 was confidential. And this is --
8 THE WITNESS: Well, I don't
9 think the public knew about it.
10 MR. SHAW: There is no question
11 pending.
12 Q So on the whole, Mr. White,
13 what, in this, in this document, we are
14 going to get to the inadvertent sending in
15 a minute. But what in this document
16 impeded the union negotiations, if
17 anything?
18 A What impeded the negotiations?
19 Q Yes. In this --
20 A Or what could have impeded --
21 Q I'm asking what did, what
22 impeded?
23 A Well, I think what was impeding
24 the negotiations was the argument about
25 the length of the day and the number of

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1 Proceedings
2 periods in the day.
3 Q Wasn't the public aware of that,
4 as we had talked about?
5 A Yes.
6 Q And the public was also aware of
7 the hiring of the consultant, correct?
8 A Yes.
9 MR. SHAW: Asked and answered.
10 A Yes, just not the mediation.
11 Q Now, Mr. White, in your direct
12 testimony you had stated -- I'm still on
13 District 6.
14 (Pause)
15 Q You had stated that
16 Ms. Ziegelbaur sent an email to
17 Ms. Broderick, correct? In your direct
18 testimony.
19 A That is what the email is.
20 Q Okay. Let's take a look at this
21 email. Maybe you can help us explain
22 this. Do you see the email that we talked
23 about on, first of all, on -- let me go
24 back. August 9 at 12:53?
25 A Yes.

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107	1 Proceedings 2 Q And it says from Cairenn 3 Broderick NYSUT.org? 4 A Yes. 5 Q And this is an email from you, 6 correct? 7 A Correct. 8 Q And you sent this email, 9 correct? 10 A That's right. 11 Q And why is your email coming 12 from the union representative? 13 A Because the union representative 14 had given me the link to the meeting that 15 the Board was going to attend in August. 16 Q But why were you using, you 17 still didn't answer my question. Why are 18 you using the union representative email 19 and not your own email to send this email? 20 A Because it contained a link so I 21 just forwarded the email on. 22 Q Did you forward it or actually 23 send it? 24 (Pause) 25 A I think I just forwarded it.	109	1 Proceedings 2 MR. SHAW: I object. That 3 sounds argumentative. The witness has 4 already explained he forwarded an 5 email. And it's marked as being from 6 Cairenn Broderick. That is not in 7 dispute. 8 MS. WALSH: It is in dispute. 9 That is highly prejudicial to state 10 that because if this email was not 11 forwarded -- this email was sent. And 12 we can look at it. 13 THE ARBITRATOR: So rather than 14 have argument ask the witness another 15 question and see if he can answer 16 questions. 17 MS. WALSH: Okay. 18 Q So let me ask you. You said you 19 never received the email. Let's look at 20 the email. It says: "Jeff, please 21 correct me if I'm wrong but I thought 22 where we left off in the last exec was the 23 following." 24 MR. SHAW: I'm objecting. I 25 don't think that's the question.
108	1 Proceedings 2 The piece is missing from the email but I 3 think I just forwarded it. 4 Q Where is your email, where is 5 your email address? 6 A My email address? 7 Q Uh-huh. 8 A In the one that I sent, is that 9 what you are asking? 10 Q Yes. The email on August 9, 11 2021 at 12:53? Where is your email 12 address that you sent it? 13 A I don't know. 14 Q Isn't it true that you sent it 15 through Ms. Broderick's email, that it is 16 set up like that? 17 A Mrs. Broderick sent me this and 18 I forwarded it on, yes. 19 Q But typically when one forwards 20 an email, there is a mark that one 21 forwarded the email, correct? It says 22 Marion Walsh is forwarding this to -- 23 A Typically, yes. 24 Q And this is a District exhibit, 25 correct?	110	1 Proceedings 2 MS. WALSH: I'm not finished 3 yet. 4 MR. SHAW: Could she ask a 5 simple question? 6 THE ARBITRATOR: I've already 7 asked that so... 8 Q Do you see that this is 9 addressed to Jeff? 10 A It is written as if it is to 11 Jeff but I'm not up in the address. 12 Q Okay. But look. She was 13 responding, wouldn't it be fair to say 14 reading this in plain language, she was 15 responding to the email on August 9, 2021 16 which you had received from Cairenn 17 Broderick; do you see that 18 MR. SHAW: I'm going to object 19 to this witness being asked what the 20 intent was of Ms. Ziegelbaur. 21 MS. WALSH: I'm asking him -- 22 THE ARBITRATOR: Hold on, both 23 of you. 24 MS. WALSH: Uh-huh. 25 THE ARBITRATOR: The

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111	1 Proceedings 2 superintendent has testified that he 3 received a Zoom link from the LRS and 4 he was forwarding it to the Board 5 members. So that's one piece. He 6 forwarded a Zoom link. Now -- 7 MS. WALSH: And so -- 8 THE ARBITRATOR: Let me finish. 9 And now it seems that Ms. Ziegelbaur 10 responded to that particular 11 forwarding. And having a discussion 12 with the superintendent about a topic 13 other than the Zoom link. Isn't that 14 what happened? 15 MS. WALSH: No. 16 THE ARBITRATOR: Okay. 17 MS. WALSH: I would ask the 18 District if that is indeed what 19 happened to produce an actual email 20 showing the forwarding then. 21 THE ARBITRATOR: Showing the 22 what? 23 MS. WALSH: Showing the 24 forwarding that, through Mr. White's 25 email he forwarded this email. That	113	1 Proceedings 2 there's a Zoom link. 3 And the question is whether 4 responding "reply all" or trying to 5 write to the superintendent in that 6 context, whether that's right or not. 7 So just ask your questions if you can 8 make it into a question. 9 MS. WALSH: Uh-huh. I'm just 10 asking the superintendent now -- 11 Q If you would, please, again, 12 asking Counsel to produce the email that 13 shows that this was a forwarded email, 14 because this right now is just an email 15 from Cairenn Broderick. 16 THE ARBITRATOR: You can ask the 17 question, is there anything else 18 besides this? 19 MS. WALSH: Well, I'm asking for 20 the document to be produced. 21 THE ARBITRATOR: Or ask him if 22 anything else exists. Asking him to 23 produce a document that may not exist. 24 Q Have you seen the document? Do 25 you recall forwarding this email?
112	1 Proceedings 2 is not what this document says. 3 THE ARBITRATOR: I don't have it 4 in front of me right now because I've 5 given mine to the witness. So I'm not 6 exactly sure what you are saying. 7 MS. WALSH: Okay. 8 THE ARBITRATOR: Let's just try 9 to do this. Ask a question and wait 10 for an answer. And see if we can 11 clarify it. 12 MS. WALSH: Uh-huh. 13 THE ARBITRATOR: But right now 14 it looks to me that there was a 15 forwarding on the Zoom link. Right? 16 MS. WALSH: That? 17 THE ARBITRATOR: Is that what 18 the "ladies and gentlemen" was? 19 THE WITNESS: Yes. 20 THE ARBITRATOR: Okay. So we're 21 going to have a Zoom. In this 22 situation it looks like the teachers' 23 union wants to meet with the Board and 24 the Board has agreed. Some people are 25 in person, some people are Zoom so	114	1 Proceedings 2 A Yes. 3 Q Okay. Can you produce that 4 document? 5 A I could look in my email. 6 Q Okay. Now let's look at your 7 District Exhibit 7. Which is the report 8 of the investigation. 9 (Pause) 10 THE ARBITRATOR: Do you have a 11 question pending? 12 Q Yes. Do you have a copy of it? 13 A No. 14 Q I want you to please look at the 15 document. 16 (Handing) 17 Q Have you reviewed this document? 18 A Yes. 19 Q Okay. And have you read the 20 third paragraph? 21 A Yes. Yes, I did. 22 Q Do you see the first sentence 23 "The email sent by Jeff White on August 9, 24 2021 at 12:53 on behalf of Cairenn 25 Broderick of NYSUT? Cairenn,

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115	<p>1 Proceedings</p> <p>2 C-a-r-e-n-n, of NYSUT.</p> <p>3 MR. SHAW: It is misspelled.</p> <p>4 It's C-a-i-r-e-n-n.</p> <p>5 Q Yes. (Continuing) "NYSUT.</p> <p>6 Indicates there is a delegation or</p> <p>7 federation between the two emails." Do</p> <p>8 you understand what that means?</p> <p>9 A Yeah, I'm not a computer expert</p> <p>10 but I get what this is saying here, yes.</p> <p>11 Q So what does that mean to you?</p> <p>12 A Well, it's saying that I was</p> <p>13 permitted to forward this email on to the</p> <p>14 Board. For this Zoom link.</p> <p>15 Q Is that what that says? The --</p> <p>16 MR. SHAW: Objection. Asked and</p> <p>17 answered. He said yes.</p> <p>18 THE ARBITRATOR: You can ask him</p> <p>19 what he believes it means. If you</p> <p>20 have other interpretations, you may</p> <p>21 have to get them from someone else.</p> <p>22 MS. WALSH: Okay.</p> <p>23 Q The next line says: "Essentially</p> <p>24 Cairenn Broderick and NYSUT has given</p> <p>25 permission for emails to be sent on their</p>	117	<p>1 Proceedings</p> <p>2 the superintendent to the world.</p> <p>3 Q Is that accurate from your</p> <p>4 perspective?</p> <p>5 A Could you ask that --</p> <p>6 Q Let me ask, let me read that</p> <p>7 again. "Essentially Cairenn Broderick and</p> <p>8 NYSUT have given permission for emails to</p> <p>9 be sent on their behalf by Jeff White."</p> <p>10 Now that includes other emails, correct?</p> <p>11 A Well, I don't know. From what I</p> <p>12 read here it says that I was able to</p> <p>13 forward the Zoom link.</p> <p>14 Q But you don't need permission to</p> <p>15 forward a link, do you?</p> <p>16 MR. SHAW: I'm going object to</p> <p>17 getting into what could or couldn't</p> <p>18 be. We have heard what it was, what</p> <p>19 is and we should move on.</p> <p>20 MS. WALSH: If a potential --</p> <p>21 THE ARBITRATOR: You can ask</p> <p>22 this witness what this means to him</p> <p>23 and whether he has ever received the</p> <p>24 permission to delegate or federate or</p> <p>25 move other union emails onto other</p>
116	<p>1 Proceedings</p> <p>2 behalf by Jeff White." Were you aware of</p> <p>3 that? That --</p> <p>4 MR. SHAW: That it says that?</p> <p>5 MS. WALSH: No.</p> <p>6 Q Were you aware that</p> <p>7 Ms. Broderick and NYSUT had given</p> <p>8 permission for emails to be sent by you?</p> <p>9 A Well, by the fact that I was</p> <p>10 able to forward it to the Board.</p> <p>11 THE ARBITRATOR: For this Zoom</p> <p>12 link for this meeting?</p> <p>13 THE WITNESS: Right.</p> <p>14 Q Are you aware how, what a</p> <p>15 delegation of email is?</p> <p>16 MR. SHAW: I thought he just</p> <p>17 answered that.</p> <p>18 THE ARBITRATOR: It seems to me</p> <p>19 that the witness has answered it in</p> <p>20 the sense that he has said, I was</p> <p>21 authorized to forward this to the</p> <p>22 Board to invite them to this meeting.</p> <p>23 It doesn't talk about a general</p> <p>24 delegation. All emails that Cairenn</p> <p>25 has access to can be sent around by</p>	118	<p>1 Proceedings</p> <p>2 people.</p> <p>3 MS. WALSH: This is essential --</p> <p>4 THE ARBITRATOR: It seems to me</p> <p>5 that it has been asked and answered</p> <p>6 that he is saying he knew he could</p> <p>7 send, he could forward the Zoom link.</p> <p>8 He doesn't have access to union</p> <p>9 emails.</p> <p>10 MS. WALSH: This is essential to</p> <p>11 explore here because there is no</p> <p>12 indication beyond what he stated here</p> <p>13 through this document that is quoted.</p> <p>14 MR. SHAW: It's -- (inaudible).</p> <p>15 THE ARBITRATOR: However, this</p> <p>16 says that -- Mr. Shaw?</p> <p>17 MR. SHAW: Yes, you know, if I</p> <p>18 may, standing on the head of a pin,</p> <p>19 there could be a delegation for a</p> <p>20 minute, for an hour, for an eternity.</p> <p>21 This hearing is about the delegation</p> <p>22 of this email and where it ended up</p> <p>23 residing.</p> <p>24 THE ARBITRATOR: Right.</p> <p>25 MR. SHAW: And to get into,</p>

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119	1 Proceedings 2 well, is it now that Jeff White is a 3 delegate for NYSUT and he can send 4 emails all over the state for the rest 5 of the year? That is not relevant to 6 the proceedings. I'd like us to move 7 on. 8 MS. WALSH: This is certainly 9 relevant because it goes to whether or 10 not when Ms. Ziegelbaur replied to 11 Cairenn Broderick she was replying to 12 Mr. Brehennan and whether it wasn't 13 just forwarding the email but he 14 actually used that email. 15 Just like when I would send, for 16 example, an email from my attorney 17 email but I delegated it to Google, it 18 would actually come from the Google 19 email rather than my attorney email. 20 So that is why it is relevant and we 21 need a tech expert to, I understand 22 you're not a tech expert but -- 23 THE ARBITRATOR: I don't think 24 you can get any more from this witness 25 is my point.	121	1 Proceedings 2 Do you see where the 3 investigator says in the middle of the 4 P.C. line were either auto-fill or 5 physically typed to the recipient? 6 A Yes. 7 Q So in fact, this could have been 8 auto-filled, correct? 9 A Well, that is what it says, yes. 10 Q Uh-huh. 11 A It says that, for example, 12 Mrs. Ziegelbaur in the cc line would have 13 begun typing a recipient whom she has 14 emailed prior. And the address as well as 15 the extension would go in and populate the 16 address. 17 THE ARBITRATOR: On the cc line. 18 Q I wanted to turn your attention 19 to the last paragraph of this also of 20 District Exhibit 7. "It is suggested that 21 Tuxedo UFSD has a comprehensive analysis, 22 conducted of their delegation, 23 federations and server rules, regarding 24 exchanges in email affiliations, 25 particularly with emails not school
120	1 Proceedings 2 MS. WALSH: But -- 3 THE ARBITRATOR: You're just 4 going to be going over the hill. 5 MS. WALSH: This document -- 6 THE ARBITRATOR: The second page 7 of this document, D6, says "Below is 8 the link for our meeting." 9 MS. WALSH: No, listen. That's 10 not the issue. I just wanted to go 11 over this, please. So in any event -- 12 THE ARBITRATOR: But that is the 13 link that we're talking about. 14 MS. WALSH: It's from the 15 reading. It's not from the 16 superintendent. In any event, let me 17 --I will move on and we will have an 18 expert come on but I will -- 19 Q I want to know that, you had 20 also testified when you go to District 7, 21 looking at District 7 that, you said that 22 your investigator had determined that 23 Ms. Ziegelbaur would have had to type in 24 the lines. And I wanted to refer your 25 attention to Exhibit 7 paragraph 4.	122	1 Proceedings 2 district affiliated, i.e., NYSUT." Have 3 you read that recommendation? 4 A I did. 5 Q And what do you understand that 6 to mean? 7 A The consultant is recommending 8 that we have an analysis conducted or an 9 audit of some of these delegations and 10 federations and server rules. And we're 11 looking into doing that. We're looking 12 into having an IT person come in and audit 13 our IT department. 14 Q And it, wouldn't it be fair to 15 say because these delegations can create 16 confusions as to who the emails are coming 17 from, correct? 18 A I suppose it could mean that. 19 It says, it is suggested that we have an 20 analysis done of that. Yes. 21 Q And when did you -- I'm sorry, 22 Mr. White. Did you actually order this 23 report? 24 A No. 25 Q Or did you ask for the report?

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123	1 Proceedings 2 Were you aware that Counsel was asking for 3 the report? 4 A I think I came to this report a 5 day or two ago. 6 Q So, Mr. White, you received the 7 email on August 9 from Cairenn Broderick 8 and she is not sure if you received this 9 email? 10 A Are we back on the other one? 11 Q Back to District 6. 12 (Pause) 13 THE WITNESS: Okay. 14 Q Did you take any action after 15 receiving this email? 16 A Which email? 17 Q The one I just read: "Not sure 18 if you received my email." 19 A Okay. The one from 20 Mrs. Broderick. 21 Q Uh-huh. 22 A I don't recall. 23 Q Did there come a time when you 24 received any email from Ms. Ziegelbaur 25 about this or any other information?	125	1 Proceedings 2 (Pause) 3 THE ARBITRATOR: Yes, I forgot, 4 they are all under these big tabs. 5 Got 'em. Which one, 5? F. 6 MS. WALSH: F as in Frank. 7 THE ARBITRATOR: F. I have it. 8 Do you want me to give it to the 9 witness? 10 MS. WALSH: I want to make sure 11 the Board members all have copies and 12 I did make about 10 copies. 13 (Hanging) 14 (Pause) 15 THE ARBITRATOR: All right. We 16 have an email exchange. It's 17 Respondent's F. 18 Q Mr. White, you said you didn't 19 recall if there was further 20 correspondences. Did you receive these 21 emails? 22 A No. I mentioned to you that 23 another Board member had responded. 24 Q Okay. So if you look at Monday, 25 the email on page 2 of Exhibit F, there is
124	1 Proceedings 2 A I don't recall. 3 (Pause) 4 THE WITNESS: If I'm not 5 mistaken -- 6 MR. SHAW: There is no question 7 pending. 8 MS. WALSH: Well, no. You were 9 going to -- 10 Q You said you couldn't recall. 11 Was there something that you were going to 12 say? 13 A No. I think I received a 14 response from another Board member saying 15 that this had gone inappropriately to the 16 union. To NYSUT. 17 Q So I want to turn your attention 18 now what's right now ID'd as Respondent 19 Exhibit F as in Frank. 20 (Pause) 21 MS. WALSH: Ms. Hoffman, do you 22 have a copy? 23 THE ARBITRATOR: I believe I 24 received one. I'm looking for it. 25 It's the email exchange.	126	1 Proceedings 2 an email from Mr. Castricone to Dorothy 3 Ziegelbaur as well as the Board of 4 Education? 5 A I see it. 6 Q And do you see the email before 7 this as well? On page 3. Is that the 8 same email that we were referring to in 9 District 6? 10 A Yes, seems to be. 11 Q And then did you receive the 12 response on page 1 from Ms. Ziegelbaur? 13 A Yes. 14 Q And do you see where she says, 15 "It was a hundred percent not my intention 16 to put Caireinn on this email thread"? 17 A Yes. 18 Q And did you review it at the 19 time? When you received it, did you 20 review it? 21 A Yes, of course. 22 Q Okay. And did you believe her 23 explanation? 24 A Yes. 25 THE ARBITRATOR: So are you

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127	<p>1 Proceedings 2 offering the exhibit? 3 MS. WALSH: Yes. One more 4 question. 5 Q Do you see on page 2 6 Ms. Ziegelbaur also says: "So I reiterate 7 it was not my intention to include the 8 union counsel on the email." 9 A Yes. 10 Q Okay. 11 Q You would agree that 12 Ms. Ziegelbaur had noted that this was not 13 her intention? 14 MR. SHAW: I'm going to object. 15 The document speaks for itself. 16 THE ARBITRATOR: Sustained. 17 Q But, Mr. White, as to Charge 1, 18 as to this email, you had, were you part 19 of the decision on recommendation on 20 preferring a charge? 21 A No. 22 Q Okay. Would it be fair to say 23 that if someone said they made a mistake 24 on something, it's not a willful action? 25 MR. SHAW: I'm going to object.</p>	129	<p>1 Proceedings 2 MR. SHAW: We have no objection. 3 THE ARBITRATOR: All right. 4 Respondent's Exhibit F is in evidence. 5 (Whereupon, Respondent's Exhibit 6 F was received and admitted into 7 evidence, as of this date.) 8 THE ARBITRATOR: And that 9 incorporates some of District 6 you 10 are saying, Mr. Shaw? 11 MR. SHAW: Yes. 12 THE ARBITRATOR: Okay. 13 Ms. Walsh? 14 CROSS EXAMINATION (Continued) 15 BY MS. WALSH: 16 Q Mr. White, you said you were not 17 included in the BOE email? 18 A I don't believe I'm on that 19 string. 20 Q Is the Board aware of that, do 21 you know? 22 A I believe so. Yes. Just the 23 Board of Ed and the District clerk. 24 Q Next you had testified that the 25 Board appointed at a meeting with Margaret</p>
128	<p>1 Proceedings 2 He is not called upon to be a judge or 3 a Board member. 4 THE ARBITRATOR: Sustained. 5 MS. WALSH: So I want to please 6 admit -- 7 THE ARBITRATOR: Respondent's F? 8 MS. WALSH: Respondent's F -- 9 THE ARBITRATOR: Respondent's F. 10 Any objection, Mr. Shaw? 11 MR. SHAW: Just a fast voir dire 12 on it. 13 (Pause) 14 VOIR DIRE EXAMINATION 15 BY MR. SHAW: 16 Q Mr. White, in reviewing what is 17 identified as Respondent's F for evidence, 18 looking at the first two pages, are these 19 true and accurate copies of emails that 20 you received? 21 A Yes. 22 Q And the remainder of it is what 23 you've already reviewed in evidence as 24 District Exhibit 6, correct? 25 A Yes.</p>	130	<p>1 Proceedings 2 Muenkel to conduct an investigation? 3 A Yes. 4 Q And what was the reason for the 5 investigation? 6 A The reason for the investigation 7 was because there was an allegation of 8 confidential student record information 9 being, having been released or breached. 10 Q And who made the allegation? 11 A Mrs. Ziegelbaur. 12 Q And could you explain -- were 13 you part of -- did you witness -- did she 14 make the allegation to you or -- 15 A It was said during the executive 16 session as I remember. 17 Q Okay. And what do you recall 18 did she say from your perspective? 19 A Well, just that she believed 20 that the information that was shared was 21 confidential student information. 22 Q Was it just that it was 23 confidential information? 24 A I'm trying to get what you're 25 asking.</p>

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131	<p>1 Proceedings</p> <p>2 Q Was there anything else that she</p> <p>3 alleged?</p> <p>4 A There was quite an exchange that</p> <p>5 was going on at that time. It was the</p> <p>6 July, if I'm not mistaken, the July 8</p> <p>7 executive session.</p> <p>8 Q And what had happened at the</p> <p>9 July 8 executive session?</p> <p>10 MR. SHAW: I'm going to object.</p> <p>11 I think the content of what went on at</p> <p>12 the July 8 executive session is not</p> <p>13 related to the charges in any direct</p> <p>14 way.</p> <p>15 MS. WALSH: It is, but we think</p> <p>16 it is because --</p> <p>17 MR. SHAW: Can we have a proffer</p> <p>18 then?</p> <p>19 MS. WALSH: Yes. Let me give</p> <p>20 you, the District --</p> <p>21 MR. SHAW: Should the witness be</p> <p>22 excused for the proffer or should he</p> <p>23 be here?</p> <p>24 MS. WALSH: He can, I mean I</p> <p>25 think --</p>	133	<p>1 Proceedings</p> <p>2 deliberations but because the exchange</p> <p>3 between the two Board members</p> <p>4 certainly was, had a lot of animus in</p> <p>5 it, I think it is certainly relevant</p> <p>6 to have some discussion on it.</p> <p>7 THE ARBITRATOR: So are we going</p> <p>8 to ask the witness what he recalls</p> <p>9 about that?</p> <p>10 MS. WALSH: Well, I can ask him</p> <p>11 if he received the letter which he</p> <p>12 should have received.</p> <p>13 MR. SHAW: What is the marking</p> <p>14 on that letter?</p> <p>15 THE ARBITRATOR: The letter I</p> <p>16 have, it's ID only. E.</p> <p>17 MR. SHAW: E? And what is the</p> <p>18 date on it?</p> <p>19 MS. WALSH: July 20.</p> <p>20 THE ARBITRATOR: Yes. E,</p> <p>21 confidential and privileged letter</p> <p>22 between counsel. That is the letter</p> <p>23 you want to put in evidence?</p> <p>24 MS. WALSH: Well, because --</p> <p>25 MR. SHAW: I may be objecting to</p>
132	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: Are you going</p> <p>3 to provide a proffer now?</p> <p>4 MS. WALSH: Yes.</p> <p>5 THE ARBITRATOR: All right.</p> <p>6 Please step out, Mr. White. And we</p> <p>7 will bring you back again.</p> <p>8 (Witness left the room)</p> <p>9 THE ARBITRATOR: We are on the</p> <p>10 record, it is a proffer of evidence.</p> <p>11 MS. WALSH: I want to give the</p> <p>12 witness a document that has been</p> <p>13 identified as Exhibit E. And it is a</p> <p>14 letter of July 20, 2021 and --</p> <p>15 THE ARBITRATOR: It's a letter</p> <p>16 between counsel?</p> <p>17 MS. WALSH: Yes. It was shared.</p> <p>18 Yes. But there are claims in this</p> <p>19 hearing, as you know, that the charges</p> <p>20 here are in part retaliatory for</p> <p>21 charges that were brought and</p> <p>22 dismissed against Mr. Castricone back</p> <p>23 on July 8.</p> <p>24 So it is certainly relevant. We</p> <p>25 are not going to go into all of the</p>	134	<p>1 Proceedings</p> <p>2 it because --</p> <p>3 MS. WALSH: Well, I sent it to</p> <p>4 Counsel because I would not</p> <p>5 communicate directly to the District</p> <p>6 so it's regarding District --</p> <p>7 (Inaudible)</p> <p>8 MR. SHAW: I have a question in</p> <p>9 terms of scope of crossing the witness</p> <p>10 as to what he testified about.</p> <p>11 MS. WALSH: I want to see if he</p> <p>12 received this letter.</p> <p>13 THE ARBITRATOR: For what</p> <p>14 purpose?</p> <p>15 MS. WALSH: Because it</p> <p>16 highlights the allegations that we are</p> <p>17 talking about.</p> <p>18 THE ARBITRATOR: Why don't we</p> <p>19 just ask him what he knows about,</p> <p>20 rather than whether he saw a letter</p> <p>21 from two lawyers about it that is</p> <p>22 confidential.</p> <p>23 Ask him questions, you are free</p> <p>24 to ask him questions. Was he present</p> <p>25 at an executive session. What</p>

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135	<p>1 Proceedings</p> <p>2 happened. What does he remember. Who</p> <p>3 said what to whom.</p> <p>4 MS. WALSH: That's what I was</p> <p>5 doing. I understand from --</p> <p>6 THE ARBITRATOR: Right. But</p> <p>7 that has nothing to do with taking a</p> <p>8 confidential letter between two</p> <p>9 attorneys which is marked confidential</p> <p>10 and privileged and attributing</p> <p>11 anything in it to the witness.</p> <p>12 MS. WALSH: Well, I need to know</p> <p>13 if he reviewed it.</p> <p>14 THE ARBITRATOR: Why?</p> <p>15 MS. WALSH: Because it's sent to</p> <p>16 Counsel for the District.</p> <p>17 THE ARBITRATOR: It's not in</p> <p>18 evidence. It's ID only. It is not</p> <p>19 coming in through this witness because</p> <p>20 he was not neither the writer nor the</p> <p>21 receiver.</p> <p>22 So we can ask him about his</p> <p>23 personal knowledge of meetings and</p> <p>24 situations that he was privy to.</p> <p>25 MR. SHAW: I'd still like a</p>	137	<p>1 Proceedings</p> <p>2 MS. WALSH: Because he then, we</p> <p>3 think he is misusing information in</p> <p>4 retaliation for her bringing the</p> <p>5 charges. And we think these charges</p> <p>6 are for the retaliation for in big</p> <p>7 part for those charges. But there's a</p> <p>8 lot of animus between the two of them.</p> <p>9 MR. SHAW: And all of this is in</p> <p>10 the papers submitted to the</p> <p>11 Commissioner --</p> <p>12 THE ARBITRATOR: Exactly.</p> <p>13 MR. SHAW: -- which will be</p> <p>14 dealt with on Monday. And that's the</p> <p>15 forum for it. She can't pursue it in</p> <p>16 two forums. And it would be judicial</p> <p>17 inefficiency and impropriety to do so.</p> <p>18 MS. WALSH: I think the Board</p> <p>19 has an obligation to consider this and</p> <p>20 understand what happened.</p> <p>21 THE ARBITRATOR: That's why I'm</p> <p>22 suggesting to you that you ask him</p> <p>23 what happened and let's make it short</p> <p>24 and sweet and move on.</p> <p>25 MS. WALSH: That's what I was --</p>
136	<p>1 Proceedings</p> <p>2 proffer of what about the content in</p> <p>3 the July 8 executive session is being</p> <p>4 probed into that is consistent with</p> <p>5 the examination of the witness and</p> <p>6 also probative regarding the charges</p> <p>7 at issue. We haven't heard a proffer</p> <p>8 yet.</p> <p>9 THE ARBITRATOR: I believe we</p> <p>10 have to the extent that Ms. Walsh's</p> <p>11 claim is that it was retaliation going</p> <p>12 on and that the witness was present</p> <p>13 for an animus-charged conversation.</p> <p>14 Is that what you are saying, Ms.</p> <p>15 Walsh?</p> <p>16 MS. WALSH: Yes. Mrs.</p> <p>17 Ziegelbaur did report that at that</p> <p>18 meeting in executive session that</p> <p>19 Mr. Casticone, not just disclosed</p> <p>20 information but made some untrue</p> <p>21 statements about it; and were, from</p> <p>22 her perspective, were defamatory. And</p> <p>23 --</p> <p>24 THE ARBITRATOR: And what is the</p> <p>25 nexus with the charges?</p>	138	<p>1 Proceedings</p> <p>2 THE ARBITRATOR: And I</p> <p>3 understand, Mr. Shaw, your objection</p> <p>4 about the scope of direct, which I'm</p> <p>5 going to remind Ms. Walsh about as</p> <p>6 well.</p> <p>7 But there's some leeway here.</p> <p>8 So let's just ask the question what</p> <p>9 does he remember was said. There are</p> <p>10 a lot of other people going to take</p> <p>11 the stand here. You can get at this</p> <p>12 other ways.</p> <p>13 MR. SHAW: In all due respect,</p> <p>14 that's a bigger hearing than this.</p> <p>15 THE ARBITRATOR: Yes, it is.</p> <p>16 And what I'm trying to do is move this</p> <p>17 one along.</p> <p>18 MS. WALSH: I'm not going to</p> <p>19 have a whole hearing on this. It's, I</p> <p>20 need to get some background on it.</p> <p>21 THE ARBITRATOR: No, we are not</p> <p>22 going to have background. We're going</p> <p>23 to have one question, which said,</p> <p>24 would you tell us what happened at the</p> <p>25 July 8th meeting. What happened. And</p>

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139	1 Proceedings 2 let him tell what he remembers. 3 MR. SHAW: As it relates to 4 what? 5 THE ARBITRATOR: Well, we're 6 talking about charge one and two. But 7 Ms. Walsh's position is that these 8 charges were brought in retaliation. 9 So if there was an exchange that he 10 heard, let's hear it. And then let's 11 move on. 12 MR. SHAW: Well, does this 13 presuppose that one Board member 14 overreached the minds of five other 15 Board members to vote to bring 16 charges? Is that the point? 17 THE ARBITRATOR: Is that your 18 point, Ms. Walsh? That an exchange 19 between Board members could make five 20 other Board members bring a charge? 21 MS. WALSH: I think that is a 22 complicated question to answer but -- 23 THE ARBITRATOR: Is that your 24 position? 25 MS. WALSH: I think there is	141	1 Proceedings 2 the Muenkel report we're seeing, the 3 report. And it's necessary to 4 understand what happened at that 5 meeting. So I'll ask one more 6 question what he recalls about the 7 meeting. Then I'll move onto the 8 report. 9 MR. SHAW: We object. 10 THE ARBITRATOR: All right. 11 Let's get the witness back in. We 12 will have a question in limited scope. 13 Just ask him what he recalls and don't 14 prompt him. Just ask him what he 15 recalls. 16 (Pause) 17 (The witness returned) 18 THE ARBITRATOR: All right. 19 Mr. White, pay attention to the 20 question that's being asked. Just 21 answer that question. 22 THE WITNESS: Sure. Yes, 23 ma'am. 24 Q Mr. White, you were testifying 25 about the July 8 executive session and
140	1 Proceedings 2 certainly a deference to the Board 3 president in certain areas especially 4 when there are new Board members. So, 5 yes, I do think that's part of it. 6 THE ARBITRATOR: I think we are 7 not going to be able to absolve the 8 question of human behavior. 9 MS. WALSH: I'm not asking you 10 to adjudicate that right now. I just 11 want to get the background in. 12 MR. SHAW: That insults the 13 intelligence of every member present. 14 THE ARBITRATOR: I understand. 15 MR. GIVENS: I take offense to 16 the statement she just made. 17 THE ARBITRATOR: All right. 18 Let's get back to the hearing for a 19 minute. This hearing. These charges. 20 This witness. We've had direct exam 21 on charge one and two. 22 We are now having cross-exam on 23 charge one and two. How can we keep 24 this really tight? 25 MS. WALSH: I'm trying to get to	142	1 Proceedings 2 what prompted the investigation of the 3 eventually hiring Margaret Muenkel. And I 4 wanted to ask you in relation to that, 5 what happened at that July 8 meeting? 6 MR. SHAW: That is a compound 7 question. 8 MS. WALSH: It was one question, 9 it just had background. 10 MR. SHAW: Do you understand the 11 question? 12 THE WITNESS: She wants to know 13 what happened at the July 8th meeting. 14 THE ARBITRATOR: Right. 15 MR. SHAW: In context. In terms 16 of leading to the appointment of the 17 investigator. 18 A So, it was going to be an 19 executive session with the Board and the 20 current Board president, Mr. Castricone, 21 was being asked to leave the room. There 22 was going to be a discussion at that time 23 about Mr. Castricone. And before he left 24 he wanted the Board to hear something that 25 he had to say.

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1 Proceedings
2 Mr. Castricone felt that he was
3 being retaliated against because he was
4 told information by whistleblowers that
5 there was a possible incident where there
6 was an attempt to change the grade of a
7 particular student in the School District.
8 And he knew that and he had that
9 information. And he felt that he was
10 being retaliated against by
11 Mrs. Ziegelbaur because of the information
12 that he had.
13 Q And did he say anything specific
14 about what that information was?
15 A That there were, that
16 whistleblowers had brought to his
17 attention that there was an attempt to
18 change grades of a student.
19 Q And was a whistleblower
20 complaint ever reported to you?
21 A Not to me, no.
22 Q And was there a whistleblower
23 complaint ever filed?
24 A Not that I know of.
25 Q And --

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1 Proceedings
2 MR. SHAW: I'm going to object
3 to this line of questioning. It --
4 THE ARBITRATOR: I know. We are
5 doing exactly what we didn't want to
6 do. And we said we'd ask a question
7 about what happened. So do you want
8 to move on, Ms. Walsh?
9 Q So after this allegation, did
10 there come a time that, when did you
11 actually hire Margaret Muenkel?
12 A Let's see. Her report was dated
13 September 15 so I'm going to say late
14 August, early September.
15 Q And were there any other actions
16 that you had recommended for the Board or
17 that the Board authorized when they issued
18 a complaint?
19 A Yes. There was training that
20 was delivered to the Board on
21 confidentiality. So that was done and
22 also the staff received training on
23 confidentiality, training at the
24 superintendent's conference day.
25 Q So you have reviewed the Muenkel

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1 Proceedings
2 report?
3 A Yes.
4 Q Okay. You mentioned that there
5 was student personally identifiable
6 information in the report. What student
7 personally identifiable information was in
8 the report?
9 MR. SHAW: I'm going to object.
10 We are now getting into the details,
11 the contours of the report. This
12 should not be in what may be a public
13 record and that is why I was asking
14 for an in-camera review.
15 Q I'll rephrase the question. Are
16 there any names mentioned in the report?
17 A Of a student?
18 Q Yes.
19 A I don't believe the student's
20 name was mentioned. I think it was just
21 the initials or a student's ID.
22 Q And isn't it true that the
23 report actually references Respondent's
24 child?
25 MR. SHAW: I'm going to object

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1 Proceedings
2 to that as being part of the public
3 record.
4 THE ARBITRATOR: I'm going to
5 sustain that. Let's remove that from
6 --
7 Q Are there any other students
8 mentioned, if you know?
9 THE ARBITRATOR: You asked if
10 there were any student names in the
11 report.
12 Q Any other student's personally
13 identifiable information included?
14 A Of other students?
15 Q Yes.
16 A Not that I remember, no.
17 Q In the Muenkel report you had
18 indicated that you thought there was also
19 confidential employee information?
20 A Yes.
21 Q If you recall, is there anything
22 that is included like an employee's
23 medical record?
24 MR. SHAW: I'm going to object.
25 Relevance at this point.

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147	<p>1 Proceedings</p> <p>2 MS. WALSH: It is relevant</p> <p>3 because it's on the confidentiality</p> <p>4 question.</p> <p>5 THE ARBITRATOR: Ms. Walsh, you</p> <p>6 can ask him what would he consider to</p> <p>7 be confidential information but not go</p> <p>8 fishing --</p> <p>9 MS. WALSH: I'm not fishing, I'm</p> <p>10 looking at Public Officers Law 89.2</p> <p>11 which states that in order for a</p> <p>12 report to be --</p> <p>13 THE ARBITRATOR: But is there</p> <p>14 allegation that there's medical</p> <p>15 information about employees? No.</p> <p>16 MS. WALSH: But --</p> <p>17 THE ARBITRATOR: So that's what</p> <p>18 I'm saying. But --</p> <p>19 MS. WALSH: But that is what the</p> <p>20 definition of --</p> <p>21 THE ARBITRATOR: I understand</p> <p>22 that.</p> <p>23 MS. WALSH: -- the personal</p> <p>24 privacy (inaudible).</p> <p>25 Q In your opinion what was</p>	149	<p>1 Proceedings</p> <p>2 this witness to come to legal</p> <p>3 conclusions.</p> <p>4 Q So you believe that the, just</p> <p>5 the statements about the alleged -- that</p> <p>6 was enough for you to -- the alleged grade</p> <p>7 changes?</p> <p>8 MR. SHAW: I'm going to object</p> <p>9 to the question as being vague. And</p> <p>10 again, he has testified that in his</p> <p>11 opinion there was that kind of</p> <p>12 information, that would be privacy</p> <p>13 protected as to employees --</p> <p>14 MS. WALSH: Counsel is</p> <p>15 testifying.</p> <p>16 MR. SHAW: -- and officers of</p> <p>17 the District. And that's to be viewed</p> <p>18 in the in-camera review measured</p> <p>19 against the legal standards of these</p> <p>20 statutes, 87 and 89.</p> <p>21 For her to go again in a very</p> <p>22 granular fashion to try to cherry pick</p> <p>23 snippets to bring the group to a</p> <p>24 conclusion is unfair and unwarranted.</p> <p>25 MS. WALSH: Well, it is also</p>
148	<p>1 Proceedings</p> <p>2 confidential about the Muenkel report?</p> <p>3 You don't have to give specifics on</p> <p>4 employees but just the category.</p> <p>5 A Are you asking in general what</p> <p>6 was confidential about it besides the</p> <p>7 student records?</p> <p>8 Q Not the student. About the</p> <p>9 employee.</p> <p>10 A About the employees</p> <p>11 specifically?</p> <p>12 Q Uh-huh.</p> <p>13 A Well, employees had shared</p> <p>14 information that they believed that there</p> <p>15 was an attempt to make inappropriate grade</p> <p>16 changes.</p> <p>17 Q And you -- do you understand</p> <p>18 that the standard is for an employee</p> <p>19 information to be confidential there must</p> <p>20 be under Public Officers Law and warranted</p> <p>21 invasion of personal privacy?</p> <p>22 MR. SHAW: I'm going to object</p> <p>23 to this line of questioning.</p> <p>24 THE ARBITRATOR: And I'm going</p> <p>25 to sustain it. Because we're asking</p>	150	<p>1 Proceedings</p> <p>2 unfair for counsel to be testifying on</p> <p>3 this when he's changing what the</p> <p>4 witness is answering.</p> <p>5 THE ARBITRATOR: All right. But</p> <p>6 I don't want a record full of argument</p> <p>7 between attorneys. Let's get a record</p> <p>8 of facts from witnesses. Do you have</p> <p>9 questions for the witness?</p> <p>10 Q At the executive session on</p> <p>11 September 15 in reviewing the Muenkel</p> <p>12 report, you had mentioned there were</p> <p>13 protocols that you had asked the Board to</p> <p>14 follow?</p> <p>15 A Yes.</p> <p>16 Q Okay. And were these protocols</p> <p>17 written down anywhere?</p> <p>18 A No.</p> <p>19 Q Are they in any Board policy?</p> <p>20 A Not to my knowledge.</p> <p>21 Q Are they codified, do you know,</p> <p>22 in any law, education law or regulation?</p> <p>23 A No.</p> <p>24 Q So this was your own protocol</p> <p>25 that you asked for at this meeting?</p>

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151	<p>1 Proceedings</p> <p>2 A It was a protocol that I</p> <p>3 discussed with our legal expert.</p> <p>4 Q And was the rest of the Board</p> <p>5 there in that discussion?</p> <p>6 A In the discussion that I had</p> <p>7 with legal counsel?</p> <p>8 Q Yes.</p> <p>9 A No, but I explained to them that</p> <p>10 --, I expressed to the Board of Education</p> <p>11 that I had a discussion with Mr. Shaw</p> <p>12 about this report being handed out with</p> <p>13 their names on it and that it would be</p> <p>14 returned to me and destroyed.</p> <p>15 Q And now, was this the first time</p> <p>16 that the protocol was discussed with the</p> <p>17 Board?</p> <p>18 MR. SHAW: I'm going to object</p> <p>19 to the relevance. The protocol was</p> <p>20 what it was and that is how it was</p> <p>21 executed.</p> <p>22 THE ARBITRATOR: For that event.</p> <p>23 MS. WALSH: I think I need to</p> <p>24 know if this was the first time the</p> <p>25 protocol was mentioned.</p>	153	<p>1 Proceedings</p> <p>2 Q Did you use the word protocol,</p> <p>3 if anything, if you recall.</p> <p>4 A I don't remember every exact</p> <p>5 word I used. But I made it very clear</p> <p>6 that I needed the report returned.</p> <p>7 Q And when you gave out the report</p> <p>8 did you tell the Board what they were</p> <p>9 receiving?</p> <p>10 A I don't recall.</p> <p>11 Q Did the Board members agree to</p> <p>12 return it at the time you gave it out?</p> <p>13 A Yes.</p> <p>14 Q All of them did?</p> <p>15 A I believe so. Yes.</p> <p>16 Q Just to clarify, they didn't</p> <p>17 know they were getting this Muenkel report</p> <p>18 at the time that you handed it out,</p> <p>19 correct?</p> <p>20 A I don't recollect if I said, you</p> <p>21 know, what the report was for, I don't</p> <p>22 recollect that.</p> <p>23 Q You stated you had asked for the</p> <p>24 report back. Do you have -- is there any</p> <p>25 belief you have that anything from the</p>
152	<p>1 Proceedings</p> <p>2 MR. SHAW: We don't think so.</p> <p>3 We object to the relevance.</p> <p>4 MS. WALSH: It's relevant</p> <p>5 because the superintendent is claiming</p> <p>6 that --</p> <p>7 THE ARBITRATOR: The</p> <p>8 superintendent?</p> <p>9 MS. WALSH: Not the</p> <p>10 superintendent. The Board is</p> <p>11 preferring charges that --</p> <p>12 THE ARBITRATOR: Here is the</p> <p>13 question, Ms. Walsh. This</p> <p>14 superintendent said he instituted a</p> <p>15 protocol for that evening, that he had</p> <p>16 discussed previously with counsel.</p> <p>17 And that he explained it to the Board.</p> <p>18 So that is the question. What</p> <p>19 is the protocol that he told the Board</p> <p>20 would be followed for that evening.</p> <p>21 And the fact that it may never have</p> <p>22 been instituted before is irrelevant.</p> <p>23 The question is what was the Board</p> <p>24 told that night. And did they</p> <p>25 understand it.</p>	154	<p>1 Proceedings</p> <p>2 Muenkel report was shared inappropriately</p> <p>3 by Ms. Ziegelbaur?</p> <p>4 MR. SHAW: I'm going to object</p> <p>5 to that. He is a fact witness about</p> <p>6 what happened in the executive session</p> <p>7 on that evening.</p> <p>8 THE ARBITRATOR: I'm going to</p> <p>9 allow the question but I'd like you to</p> <p>10 rephrase it about whether he has any</p> <p>11 information about whether</p> <p>12 Ms. Ziegelbaur has ever actually</p> <p>13 disclosed the report to anyone else.</p> <p>14 I think that's what you are asking.</p> <p>15 MS. WALSH: That's the same</p> <p>16 question.</p> <p>17 THE ARBITRATOR: Yes.</p> <p>18 MS. WALSH: But that's fine.</p> <p>19 Q If you can answer that question.</p> <p>20 A Do I know if she disclosed that</p> <p>21 information to anyone else?</p> <p>22 Q Yes.</p> <p>23 A I don't have direct knowledge of</p> <p>24 that, no. I know that she said she was</p> <p>25 going to talk to her attorney about it.</p>

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155	<p>1 Proceedings</p> <p>2 But I don't know whether she did or I</p> <p>3 don't know if she had spoken to anyone; I</p> <p>4 have no knowledge about that. I just know</p> <p>5 what happened that night.</p> <p>6 Q So you have no evidence that it</p> <p>7 was disclosed?</p> <p>8 MR. SHAW: Asked and answered.</p> <p>9 THE ARBITRATOR: Asked and</p> <p>10 answered.</p> <p>11 MS. WALSH: That's fine.</p> <p>12 Q In the conclusion of the report,</p> <p>13 isn't it true that there was a validation</p> <p>14 of --</p> <p>15 MR. SHAW: I'm going to object</p> <p>16 to anything about the specifics of the</p> <p>17 report again. That is for the star</p> <p>18 chamber proceedings.</p> <p>19 THE ARBITRATOR: Not only that,</p> <p>20 you are characterizing and asking him</p> <p>21 to agree with your characterization of</p> <p>22 a conclusion. So let's step away from</p> <p>23 that because the report will speak for</p> <p>24 itself.</p> <p>25 MS. WALSH: Okay. Mr. Shaw,</p>
156	<p>1 Proceedings</p> <p>2 when you use the term star chamber,</p> <p>3 that was very undemocratic, you know.</p> <p>4 THE ARBITRATOR: Well, it wasn't</p> <p>5 clear to me either earlier, obviously.</p> <p>6 But we are talking about --</p> <p>7 MS. WALSH: The democratic</p> <p>8 chamber that was --</p> <p>9 THE ARBITRATOR: The</p> <p>10 deliberations.</p> <p>11 MR. SHAW: What is happening</p> <p>12 here is in America too.</p> <p>13 MS. WALSH: And here apparently.</p> <p>14 THE ARBITRATOR: I wasn't sure</p> <p>15 which part.</p> <p>16 MS. WALSH: But I think it might</p> <p>17 have been an unfortunate term to use.</p> <p>18 Or perhaps accurate, obviously.</p> <p>19 (Pause)</p> <p>20 MS. WALSH: May I talk to my</p> <p>21 client for two minutes?</p> <p>22 THE ARBITRATOR: Sure. And then</p> <p>23 we will wrap up with this witness and</p> <p>24 maybe, Mr. Shaw, you'll have your next</p> <p>25 witness.</p>
157	<p>1 Proceedings</p> <p>2 (Recess taken at 12:56)</p> <p>3 (Resumed at 1:04 p.m.)</p> <p>4 CROSS EXAMINATION (Continued)</p> <p>5 BY MS. WALSH:</p> <p>6 Q Mr. White, I just want to turn</p> <p>7 your attention. I just have two follow-up</p> <p>8 questions. One is on Respondent's 6, the</p> <p>9 emails. Or we can do District 6.</p> <p>10 THE ARBITRATOR: Okay, let's go.</p> <p>11 Q Based on this email, why did you</p> <p>12 send out this email to the Board from</p> <p>13 Caireen Broderick's email from you signed</p> <p>14 it Jeff?</p> <p>15 MR. SHAW: Asked and answered.</p> <p>16 He explained.</p> <p>17 MS. WALSH: He used the term</p> <p>18 forwarded but that is not what --</p> <p>19 THE ARBITRATOR: Ms. Walsh, what</p> <p>20 is the question? Why did he forward</p> <p>21 it?</p> <p>22 Q Why did you send out the email</p> <p>23 to the Board from Cairenn Broderick's</p> <p>24 email?</p> <p>25 THE ARBITRATOR: Okay. He has</p>
158	<p>1 Proceedings</p> <p>2 already asked -- he has been asked</p> <p>3 that question and he answered it. He</p> <p>4 said he forwarded it.</p> <p>5 And you are saying that the</p> <p>6 document doesn't indicate that it was</p> <p>7 forwarded but he has already given you</p> <p>8 his answer.</p> <p>9 MS. WALSH: And if you could</p> <p>10 please again, I would want to</p> <p>11 reiterate my request, by the next</p> <p>12 hearing date to have that email, a</p> <p>13 copy of that email.</p> <p>14 MR. SHAW: If there is anything</p> <p>15 different there.</p> <p>16 MS. WALSH: Sure.</p> <p>17 Q And regarding the</p> <p>18 confidentiality and the personally</p> <p>19 identifiable information in the Muenkel</p> <p>20 report, did the Muenkel report conclude</p> <p>21 that Ms. Ziegelbaur's daughter's personal</p> <p>22 information was improperly shared by a</p> <p>23 District employee?</p> <p>24 MR. SHAW: I'm going to</p> <p>25 object --</p>

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159	1 Proceedings 2 THE ARBITRATOR: Ms. Walsh -- 3 MR. SHAW: I object to any 4 details about that report. 5 THE ARBITRATOR: Okay. First of 6 all, a little bit more courtesy with 7 everybody here. And there is an 8 objection and we have to stop talking 9 so we can hear each other. And I know 10 the objection was in the middle of 11 your sentence, which is why I'm saying 12 it across the Board: We have to be a 13 little bit more courteous. Because 14 the hearing reporter is trying to get 15 everything down in the record. 16 MS. WALSH: I would just like to 17 be able to finish the sentence before 18 the objection. 19 MR. SHAW: My apologies. 20 THE ARBITRATOR: Yes. But the 21 objection takes issue with your naming 22 the child and not wanting to put that 23 in the record. 24 MR. SHAW: And referencing 25 details of the report.	161	1 Proceedings 2 MS. WALSH: I'm sorry. I didn't 3 get to finish my question because 4 twice I was interrupted. I was 5 finishing it up. 6 Q So, I will just ask again: Did 7 the -- in your opinion was any personally 8 identifiable student information 9 improperly shared regarding the 10 allegation? 11 MR. SHAW: I'm going to object. 12 THE ARBITRATOR: Yes and I'm 13 going to sustain it. That is not the 14 area of inquiry we were going into at 15 all. You are opening up another 16 avenue entirely. 17 MS. WALSH: I was asking about 18 the report. 19 THE ARBITRATOR: No. You were 20 -- well, then I misunderstood where 21 you are headed. I thought you were 22 asking him was there anything in the 23 report that was personally 24 identifiable. Because he can tell you 25 what personally identifiable
160	1 Proceedings 2 Q I'll rephrase that part of it. 3 Did the Muenkel report conclude there was 4 any personally identifiable information 5 improperly shared by a District employee? 6 MR. SHAW: I'm going to object. 7 The report will speak for itself. 8 THE ARBITRATOR: The report does 9 speak for itself. 10 MS. WALSH: Okay. 11 THE ARBITRATOR: And we can also 12 just say to ask the witness, "in your 13 opinion," and then get an answer and 14 then we are finished with him. Right? 15 Q In your opinion, was there 16 personally identifiable information 17 improperly shared by the Board president? 18 THE ARBITRATOR: No, no, no, no. 19 That was not the question. 20 MS. WALSH: I didn't get to 21 finish it. 22 THE ARBITRATOR: We're not 23 asking him for the conclusion, Ms. 24 Walsh. That was a nice effort but 25 it's not going to work.	162	1 Proceedings 2 information is. 3 But if you are going to ask for 4 a conclusion about whether or not it 5 was improperly disclosed, etcetera, 6 that report's going to speak for 7 itself. It's a distinction with a lot 8 of power. 9 MS. WALSH: All right. So I 10 have nothing further. 11 MR. SHAW: I have one question. 12 REDIRECT EXAMINATION 13 BY MR. SHAW: 14 Q Mr. White, you were asked about 15 information disclosed to the public about 16 negotiations. Was there ever a discussion 17 of the Board's strategic interest in an 18 8-period day and hiring a consultant for 19 the negotiations for that purpose in 20 public? 21 A For the 8-period day? 22 Q Yes. 23 A I don't recollect. I don't 24 recollect that happening. No. 25 Q So you don't believe that

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163	1 Proceedings 2 happened? 3 A No. 4 MR. SHAW: No further questions. 5 THE ARBITRATOR: Anything else, 6 Ms. Walsh? 7 MS. WALSH: I have a lot of 8 followup. 9 THE ARBITRATOR: We had one 10 redirect question. So be -- 11 MS. WALSH: One followup. 12 RECROSS EXAMINATION 13 BY MS. WALSH: 14 Q Wouldn't you agree, though, that 15 matters related to the consultant -- 16 wouldn't you agree that matters regarding 17 the 8-period day are matters of 18 public/student concern? 19 MR. SHAW: Objection, beyond the 20 scope of the redirect. 21 THE ARBITRATOR: Absolutely. 22 Okay. So is that last question? 23 MS. WALSH: Yes. 24 THE ARBITRATOR: You are 25 excused, Mr. White.	165	1 Proceedings 2 A Yes. I do negotiations. 3 Q And do you represent the Tuxedo 4 Teachers' Association in negotiations? 5 A Yes, I do. 6 Q And did you do so with respect 7 to the current collective bargaining 8 agreement? 9 A Can you be more specific. 10 Q The one that is in effect for 11 the '20-'21 school year and beyond? 12 A Yes. 13 Q And was that in negotiations 14 during the month of July 2021? 15 A Yes. It was. 16 Q And do you recall sending an 17 email to Jeffrey White and David Shaw 18 regarding the negotiations of the current 19 collective bargaining agreement? 20 A Yes. 21 Q And I'd like to ask you if you 22 can identify for the record what is 23 already in evidence as District Exhibit 6. 24 (Handing) 25 A Oh, yes.
164	1 Proceedings 2 (The witness was excused) 3 (Discussion off the record) 4 MR. SHAW: I have another 5 witness, very short. And then I'm 6 resting. 7 MR. SHAW: I call Cairenn 8 Broderick as our next witness. 9 CAIRENN BRODERICK, 10 called as a witness, having been first 11 duly sworn by the Hearing Officer, was 12 examined and testified as follows: 13 THE ARBITRATOR: The witness is 14 sworn. 15 DIRECT EXAMINATION 16 BY MR. SHAW: 17 Q Ms. Broderick, can you tell us 18 where you are employed? 19 A I'm employed with the New York 20 State United Teachers. 21 Q And what kind of work do you do 22 for them? 23 A I am a labor relations 24 specialist. 25 Q And do you do negotiations?	166	1 Proceedings 2 Q And what is it? 3 A It's an email that I forwarded 4 because it really -- I received it and 5 after I read it realized I should not 6 have. Do you want more than -- 7 Q And who did you send it to? 8 A I forwarded it to Jeffrey White 9 and David Shaw. 10 Q And why did you do that? 11 A Because when I opened it, I 12 realized that it was information regarding 13 the exec session and information about 14 negotiations and a discussion amongst the 15 Board that kind of made me a bit angry. 16 Q And why were you angry? 17 A Because it mentioned the word 18 mediation, it mentioned the schedule which 19 had been a hot topic of conversation and I 20 thought we were going down a path of 21 bargaining in bad faith. 22 Q And at the time you received 23 that, were you scheduling a meeting of the 24 parties, the negotiating parties, for 25 August 12?

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<p style="text-align: right;">167</p> <p>1 Proceedings</p> <p>2 A I was which is why I opened it.</p> <p>3 I thought it was going to be a positive</p> <p>4 reply to a Zoom link that I had sent for</p> <p>5 August 12.</p> <p>6 Q And what was to be presented at</p> <p>7 the meeting on August 12?</p> <p>8 A What was being presented on</p> <p>9 August 12 was a presentation regarding the</p> <p>10 historical evolution of the schedules at</p> <p>11 the Tuxedo High School.</p> <p>12 Q And at the time of the</p> <p>13 presentation what was the Union's interest</p> <p>14 in the nature of the period schedule?</p> <p>15 A The Union's interest was trying</p> <p>16 to explain and get across the concept that</p> <p>17 the schedule that had been in effect in</p> <p>18 the 2019-2020 school year is one that had</p> <p>19 been collectively agreed to between labor</p> <p>20 and management and was in the best</p> <p>21 interest of the students; it was in the</p> <p>22 best interest of employees because the</p> <p>23 teachers taught singletons.</p> <p>24 And that was in the best</p> <p>25 interest. It was also because we were</p>	<p style="text-align: right;">169</p> <p>1 Proceedings</p> <p>2 day?</p> <p>3 A No, I wasn't.</p> <p>4 MR. SHAW: No further questions.</p> <p>5 THE ARBITRATOR:</p> <p>6 Cross-examination?</p> <p>7 MS. WALSH: Sure.</p> <p>8 CROSS EXAMINATION</p> <p>9 BY MS. WALSH:</p> <p>10 Q Ms. Broderick, I'm looking at</p> <p>11 District 6. Now, you had sent the email,</p> <p>12 if you look at page 2, on -- regarding the</p> <p>13 Zoom link?</p> <p>14 A Yes.</p> <p>15 Q Now do you know, did you send an</p> <p>16 email at 12:53 on August 9?</p> <p>17 A I sent the email, the original</p> <p>18 appointment was, I'm reading at the top of</p> <p>19 page 2, looks like it says, from me to --</p> <p>20 I sent it to myself, to Jeff White, David</p> <p>21 Shaw, Chrissy, Marco, Chris, Renee, and</p> <p>22 Beth McGowan.</p> <p>23 It looks like it was sent</p> <p>24 Tuesday at 12:05 for Thursday's meeting.</p> <p>25 And I simply wrote that I copied Jeff and</p>
<p style="text-align: right;">168</p> <p>1 Proceedings</p> <p>2 frustrated, we weren't able to get a</p> <p>3 straight answer from the Board of</p> <p>4 Education or from the District regarding</p> <p>5 the schedule that they wanted and whether</p> <p>6 or not it made sense.</p> <p>7 Q Was the Tuxedo Teachers'</p> <p>8 Association bargaining team opposed to</p> <p>9 implementing an 8-period day?</p> <p>10 A We were never opposed to</p> <p>11 anything. We didn't understand what it</p> <p>12 was that was needed, why it was needed and</p> <p>13 how it would work. So we had asked for</p> <p>14 data, we had asked for the schedule to be</p> <p>15 run with the current student body so that,</p> <p>16 in a sandbox, so that we could see what</p> <p>17 was this all about.</p> <p>18 We never rejected anything, we</p> <p>19 just kept saying, well, based on our data,</p> <p>20 it wasn't going to work. We wanted to</p> <p>21 have a chance to present our data.</p> <p>22 Q When you sent the invitation for</p> <p>23 the August 12 meeting were you aware that</p> <p>24 the District was pursuing a consultant to</p> <p>25 assist them with developing an 8-period</p>	<p style="text-align: right;">170</p> <p>1 Proceedings</p> <p>2 David and Chrissy, because I didn't know</p> <p>3 what Board members would be attending.</p> <p>4 So I set it up as it reads so</p> <p>5 that there is no pass code but a waiting</p> <p>6 room so that I could see who was coming.</p> <p>7 And I just asked to let me know who would</p> <p>8 be joining us. Because I didn't know who</p> <p>9 or what.</p> <p>10 Q And do you see the email above</p> <p>11 that which is on page 1?</p> <p>12 A Yes.</p> <p>13 Q And this is from your email?</p> <p>14 A No. That is not.</p> <p>15 Q But it says on August --</p> <p>16 A It is not from my email because</p> <p>17 it says "thank you. Jeff." I had seen</p> <p>18 that. I was confused by it but I didn't</p> <p>19 write that. That came from Jeff.</p> <p>20 Q So this was an email from Jeff</p> <p>21 that was actually sent from your email?</p> <p>22 A It shouldn't be sent from my</p> <p>23 email. I don't know how all this</p> <p>24 happened. I don't know.</p> <p>25 Q Have you reviewed any report of</p>

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171	<p>1 Proceedings 2 any consultants regarding the email why 3 this should have happened? 4 A No. Why not? 5 Q I'm just asking. 6 A No. 7 Q Okay. Let me just ask you. 8 So, let me just clarify. 9 A Yes. 10 Q Do you know why this appeared 11 like this on August 9 (indicating)? 12 A Absolutely not. I found it odd. 13 Q And do you see in Ms. 14 Ziegelbaur's email she was responding to 15 Jeff? Is that accurate? 16 A Yes, that's why I forwarded it. 17 But it was -- 18 Q At any time, looking at District 19 -- at any time, if you recall, did you 20 check any kind of dissent to allow 21 Mr. White to send emails on behalf of you? 22 MR. SHAW: I'm going to object 23 to the relevance. It's beyond the 24 scope as well. 25 THE ARBITRATOR: I'm going to</p>	173	<p>1 Proceedings 2 THE WITNESS: No. 3 THE ARBITRATOR: We're going to 4 give that back to Mr. Shaw. 5 MS. WALSH: That's fine. 6 Q This consultant, who was hired 7 by the District and Mr. Shaw, says, "The 8 email sent by Jeff White on August 9, 2021 9 at 12:53 on behalf of Cairenn Broderick of 10 NYSUT, indicates there is a delegation or 11 federation between the two emails. 12 "Essentially, Cairenn Broderick 13 at NYSUT has given permission for emails 14 to be sent on their behalf by Jeff White." 15 Did you know anything about this? 16 A No. I have a question. 17 THE ARBITRATOR: That's 18 interesting. 19 THE WITNESS: I do. 20 THE ARBITRATOR: You do? 21 THE WITNESS: I do. 22 THE ARBITRATOR: Well, you are 23 not supposed to ask questions here. 24 You're supposed to answer questions. 25 THE WITNESS: I do have a</p>
172	<p>1 Proceedings 2 allow the question. At any time did 3 you authorize Mr. White -- 4 MS. WALSH: Let me ask. 5 Q I'm going to ask you to look at 6 District Exhibit 7. 7 THE ARBITRATOR: Well, she's 8 already said she doesn't know anything 9 about this District Exhibit. 10 MS. WALSH: Well, she said she 11 didn't know why this happened. So I 12 wanted her to look at this. 13 MR. SHAW: Objection. I think 14 we are now beyond the scope of the 15 examination. Now she is being asked 16 to be an IT expert. 17 MS. WALSH: No, we are not 18 beyond the scope of the examination. 19 THE ARBITRATOR: All right, all 20 right, stop the arguing. Ms. 21 Broderick, have you ever seen that 22 before? 23 THE WITNESS: No. 24 THE ARBITRATOR: Okay. Did you 25 ask for it to be prepared?</p>	174	<p>1 Proceedings 2 question. 3 THE ARBITRATOR: You do? Okay. 4 Well, hold on to it for a few minutes. 5 THE WITNESS: Okay. I have no 6 problem with that. 7 THE ARBITRATOR: You can ask the 8 witness whether she authorized 9 Mr. White to forward a Zoom link. 10 That's it. Anything else -- 11 MS. WALSH: I don't have any 12 other questions. 13 THE ARBITRATOR: Okay. And you 14 don't have to answer because they 15 didn't ask it. So you don't even have 16 to answer it. 17 THE WITNESS: That was basically 18 what my question would have been. 19 THE ARBITRATOR: Yes. That if 20 you want somebody to forward a Zoom 21 link -- 22 MS. WALSH: Do they wind up 23 doing that? 24 THE ARBITRATOR: Yes. 25 MS. WALSH: And I don't think we</p>

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<p style="text-align: right;">175</p> <p>1 Proceedings 2 know that. 3 THE ARBITRATOR: No, no. We 4 don't know any of that and it's on the 5 record now. And it's very confusing 6 now. So what we are going to do is 7 conclude here. We are going to excuse 8 this witness. 9 THE WITNESS: Thank you. 10 THE ARBITRATOR: Have a lovely 11 afternoon. 12 THE WITNESS: Thank you. 13 (The witness was excused) 14 THE ARBITRATOR: So Mr. Shaw, 15 where are we? 16 MR. SHAW: The District rests. 17 THE ARBITRATOR: The District 18 rests. Okay. All right. The 19 District rests and we are at the 20 bewitching hour. Otherwise I would 21 ask Ms. Walsh to begin her case. 22 Can you give us an idea how many 23 witnesses you're going to have and how 24 much time we need and can we possibly 25 resume Monday morning and continue</p>	<p style="text-align: right;">177</p> <p>1 2 CERTIFICATION 3 4 STATE OF NEW YORK) 5 : Ss. 6 COUNTY OF NEW YORK) 7 8 9 I, ROBERT E. Levy, a 10 Certified Shorthand Reporter and a Notary 11 Public, do hereby certify that the 12 foregoing is a true and accurate 13 transcription of my stenographic notes. 14 I further certify that I am 15 not employed by nor related to any party 16 to this action. 17 IN WITNESS WHEREOF, I have 18 hereunto set my hand this 26th day of 19 October, 2021. 20 21 22 <i>Robert E. Levy</i> 23 _____ 24 ROBERT E. LEVY, C.S.R. 25</p>
<p style="text-align: right;">176</p> <p>1 Proceedings 2 this? 3 MS. WALSH: I can't continue on 4 Monday morning. I didn't know we had 5 discussed that. 6 THE ARBITRATOR: No. We didn't 7 discuss the fact that we were only 8 going to finish the District's case by 9 2 o'clock today. 10 MS. WALSH: I can do Wednesday. 11 (Pause) 12 THE ARBITRATOR: We'll go off 13 the record. 14 (Discussion off the record) 15 THE ARBITRATOR: Back on the 16 record. The hearing is not concluded. 17 But the District has rested and the 18 matter has been adjourned to November 19 4, the days of November 4 and 5 have 20 been reserved to conclude the matter. 21 22 (Time noted 2:33 p.m.) 23 24 25</p>	<p style="text-align: right;">178</p> <p>1 2 INDEX 3 4 WITNESS DIR CRS VD CE RED REC 5 6 JEFFREY WHITE 68 95 128 129 162 163 7 8 DIR CRS 9 CAIRENN BRODERICK 164 168 10 11 12 DIRECT EXAMINATION BY 13 MR. SHAW 14 CROSS EXAMINATION BY 15 MS. WALSH 16 17 18 19 20 21 22 23 24 25</p>

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