

GRAND LEDGE PUBLIC SCHOOLS

GRAND LEDGE PUBLIC
SCHOOLS,

Charging Party

-vs-

DR. BRIAN METCALF,

Respondent

ORIGINAL

P R E - T E R M I N A T I O N H E A R I N G

HELD BEFORE GEORGE M. BROOKOVER, HEARING OFFICER

AT GRAND LEDGE HIGH SCHOOL

820 SPRING STREET, GRAND LEDGE, MICHIGAN

ON MONDAY, SEPTEMBER 21, 2020 AT 9:00 A.M.

APPEARANCES:

On behalf of Charging Party:

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* * *

1 Grand Ledge, Michigan

2 Monday, September 21, 2020

3 9:00 a.m.

4 R E C O R D

5 MS. DUFORT: I would like to call this
6 meeting to order, and we would like to start with the
7 Pledge of Allegiance.

8 (Pledge of Allegiance.)

9 MS. DUFORT: Thank you. Mr. Brookover, would
10 you like to go ahead with roll call please?

11 HEARING OFFICER BROOKOVER: I will, and my
12 understanding of the existing State order is that he
13 or she who is speaking does not have to wear a mask,
14 so I want that understood.

15 For the roll call I don't really know any of
16 you. I'll probably massacre some of your names.
17 Mr. Cwayna?

18 MR. CWAYNA: Here.

19 HEARING OFFICER BROOKOVER: Mr. McKennon?

20 MR. MCKENNON: Here.

21 HEARING OFFICER BROOKOVER: Mrs. Mulvenna?

22 MS. MULVENNA: Here.

23 HEARING OFFICER BROOKOVER: Ms. Clark
24 Pierson?

25 MS. CLARK PIERSON: Here.

1 HEARING OFFICER BROOKOVER: Mr. Shiflett?
2 MR. SHIFLETT: Here.
3 HEARING OFFICER BROOKOVER: Mr. Smith?
4 MR. SMITH: Here.
5 HEARING OFFICER BROOKOVER: Ms. DuFort?
6 MS. DUFORT: Here.
7 HEARING OFFICER BROOKOVER: The purpose of
8 this proceeding this morning and my being here is to
9 extend -- the purpose of this hearing this morning and
10 my being here is to extend to Dr. Brian Metcalf his
11 contractual hearing before any decision is made with
12 regard to his possible termination. That's Section 7
13 of his employment contract.
14 At this point I'd like to have the attorneys
15 identify themselves.
16 MS. SWEM: Lisa Swem, Thrun Law Firm.
17 HEARING OFFICER BROOKOVER: Representing who?
18 MS. SWEM: Charging Party.
19 HEARING OFFICER BROOKOVER: And who is the
20 Charging Party?
21 MS. SWEM: The Charging Party is the Board of
22 Education.
23 HEARING OFFICER BROOKOVER: Everybody is
24 going to have to speak directly into the microphones.
25 For the Respondent?

1 MR. DELAPORTE: For the Respondent
2 Eric Delaporte of Delaporte Law, and I would like to
3 raise a procedural issue. You've indicated that this
4 happening is pursuant to his contract, but given that
5 he was fired by the Board by a motion 7-0, according
6 to all their e-mails, that hearing that he deserves
7 under his contract was already taken. It was done
8 without -- in violation of his contract, in violation
9 of due process, and if we're going to mark this as the
10 hearing before the Board of Education that's pursuant
11 to his contract, then we've got big problems with the
12 fact that he was already fired on June 5th.

13 HEARING OFFICER BROOKOVER: Is that a motion?

14 MR. DELAPORTE: That is.

15 HEARING OFFICER BROOKOVER: Okay.

16 MR. DELAPORTE: If you want to name this a
17 different hearing, that's fine, or, you know, slot it
18 up under some other reason, that's fine, but he was
19 fired on June 5th in violation of his contract. There
20 was no charges given to him prior to that hearing. He
21 was not allowed to be there. He was not
22 participating. This whole thing is an absolute sham,
23 and we would motion that this be discontinued.

24 HEARING OFFICER BROOKOVER: Ms. Swem.

25 UNIDENTIFIED SPEAKER: You got to have your

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mask on.

MS. SWEM: My mask does not need to be on --

UNIDENTIFIED SPEAKER: I'm not talking to you. Thank you though.

MR. SHIFLETT: Let's keep the public comment to zero.

MS. SWEM: Thank you. I neglected to indicate that my partner, Jennifer Starlin, from Thrun Law Firm is also here. My apologies for that oversight.

In responding to Mr. Delaporte's statement, the Michigan Supreme Court is crystal clear that a board of education speaks only through its minutes and resolutions, *Tavener versus Elk Rapids*, 1954.

The minutes of the June 5th Board meeting clearly identified the rule for the Board action. It's reflected in the Board minutes, which are exhibits, that the Board only took action to place Dr. Metcalf on paid administrative leave and took action to authorize legal counsel to file charges. That's the only Board action you will find anywhere in the recorded minutes, period. There is no Board action to terminate. Rather, the Board action, as reflected in the Board's official minutes, as recited by the Michigan Supreme Court, was to place

1 Dr. Metcalf on leave and to provide authorization for
2 legal counsel to draft charges. Both of those actions
3 happened. Dr. Metcalf was provided with the charges
4 through his legal counsel in August. That is the
5 first piece of satisfying what we call the Loudermill
6 hearing requirements, notice of the charges. The rest
7 of Loudermill requires an opportunity to review
8 evidence, and to present Dr. Metcalf's side of the
9 story is the purpose of this hearing today. There has
10 been no other decision and, indeed, some of these
11 points Mr. Delaporte made were addressed by the
12 hearing officer over the weekend in your ruling on the
13 double jeopardy claim in which you denied
14 Mr. Delaporte's motion for double jeopardy.

15 MR. DELAPORTE: And allowed --

16 HEARING OFFICER BROOKOVER: Excuse me. Are
17 you done?

18 MS. SWEM: I am. Thank you.

19 HEARING OFFICER BROOKOVER: Sir?

20 MR. DELAPORTE: And you allowed in that same
21 ruling the Respondent to bring this issue before the
22 decision maker, and I am doing so now.

23 To somehow reward the Board of Education for
24 once again violating the Open Meetings Act and failing
25 to put in the minutes what action was actually taken,

1 I'm sure at the urging of their attorneys, when they
2 noticed that they had made a huge blunder by firing
3 him without due process and without giving him notice
4 as required by his contract would be a ludicrous, an
5 absolutely ludicrous outcome. They violate a law and
6 they are allowed to then come after my client for the
7 third time. This will be the third time they've
8 disciplined him and they violated the law. They
9 violated the Open Meetings Act. They've been sued for
10 it. They know they violated the Open Meetings Act,
11 and now, all of a sudden, we're all good, right,
12 because we managed to keep our violation of the Open
13 Meetings Act and our violation of Dr. Metcalf's rights
14 out of Board minutes. I don't think so. There are
15 plenty of cases that find that when all of the Board
16 members are active in a matter, that they cannot then
17 fall back on the fact that they didn't hold an open
18 meeting and include that decision in the minutes.

19 There are plenty of cases. There's one
20 involving, and the name has slipped my mind, I
21 apologize, there's one involving the purchase of
22 school desks in which all seven of the Board members
23 were active in putting the desks together and then
24 they tried to get out of paying for the desks because
25 they had not voted in open session and put the

1 purchase of those desks into the minutes, and the
2 court finds that that's just a ridiculous argument and
3 finds in favor of the desk manufacturer. There are
4 plenty of others.

5 This is absolutely ridiculous. It is a
6 violation of even the bare fairness that a school
7 board should be espousing. A school board is supposed
8 to be an example for their children. Instead, they
9 violate the law and then they hide behind the
10 violation of law to say, oh, now, you can't hold us
11 responsible. Yeah, we fired him 7-0, a bunch, or a
12 couple who didn't, but a bunch of those people up
13 there are all bragging to the community how they fired
14 him 7-0, it was a unanimous vote based on motion and,
15 all of a sudden, they get to get away with it by
16 simply saying oh, oh, it's not in the minutes. They
17 violated the Open Meetings Act, and somehow they are
18 using the violation of the Open Meetings Act as a
19 shield to violate my client's contractual and due
20 process rights.

21 HEARING OFFICER BROOKOVER: Anything further?

22 MR. DELAPORTE: I've got plenty more to say,
23 but I'll save it for our --

24 HEARING OFFICER BROOKOVER: I'm talking with
25 regard to your motion. Anything further on the

1 motion?

2 MR. DELAPORTE: No. It's, you know, very
3 simple. They have stated in writing that he was fired
4 on June 5th, 7-0.

5 Having fired him, they violated his
6 contractual rights, they violated his due process
7 rights, and this is nothing but a sham. This is a way
8 to throw him under the bus when they have already
9 taken illegal action.

10 HEARING OFFICER BROOKOVER: Anything further
11 on the motion?

12 MR. DELAPORTE: No.

13 HEARING OFFICER BROOKOVER: The motion is
14 denied. You've preserved the issue for the record.

15 You have a preliminary matter, Mr. Delaporte?
16 We had a prehearing conference telephone call, and you
17 did indicate to me that your client had requested an
18 open meeting. In reviewing the exhibits that you
19 submitted last week, I found that I think it's --

20 MR. DELAPORTE: If it's student names, we
21 have no problem with having those struck.

22 HEARING OFFICER BROOKOVER: Excuse me,
23 Exhibit F, which I believe is a letter from the
24 Superintendent to the Board dated June 5th of 2020.
25 At the end of that letter he makes the request that

1 any proceedings with regard to his discipline or
2 termination be in closed session. I just want to
3 confirm that that is withdrawn and he does want an
4 open session?

5 MR. DELAPORTE: Withdrawn? Are you kidding
6 me? They didn't honor it to begin with. That was the
7 letter sent prior to the June 5th meeting and this
8 Board ignored it. They went ahead and had him
9 publicly bashed, his reputation ruined. They didn't,
10 they didn't listen to his request anyway. They didn't
11 honor his request to begin with, and shame on every
12 single one of you.

13 HEARING OFFICER BROOKOVER: So my question
14 is --

15 MR. DELAPORTE: We do not withdraw it. That
16 was for June 5th, that was not for September 21st. We
17 want an open hearing, we have stated that multiple
18 times.

19 HEARING OFFICER BROOKOVER: Thank you.

20 Based on the preliminary discussion we had
21 with counsel, this hearing will proceed as follows:
22 Each of the parties' attorneys will have the
23 opportunity to make a 15-minute opening statement.
24 Subsequent to that, the Charging Party will have the
25 opportunity to present any evidence which it wishes.

1 And subsequent to that, the Respondent will have the
2 opportunity to present any evidence he wishes.

3 So, given that, the only other question I
4 have for counsel is you both submitted numerous
5 exhibits or possible exhibits. Are there any
6 stipulations with regard to admissibility of exhibits
7 at this point in time? Ms. Swem?

8 MS. SWEM: There are some exhibits which are
9 offered on behalf of Dr. Metcalf to which we do not
10 object. There are some for which we object. So, we
11 could identify those to which we do not object, if
12 that meets your stipulation requirement, but we cannot
13 agree to stipulate to all of the proffered exhibits,
14 but there are some.

15 HEARING OFFICER BROOKOVER: Okay. Then we'll
16 take them up one by one. Mr. Delaporte?

17 MR. DELAPORTE: With the exception of two of
18 our exhibits, every single exhibit we received from
19 the District through FOIA. What the heck are they
20 going to object to? It's their documents.

21 HEARING OFFICER BROOKOVER: I'm asking you
22 about whether you are willing to stipulate to any of
23 the exhibits?

24 MR. DELAPORTE: I have no objection as long
25 as they lay a foundation for their relevance and their

1 authenticity. Otherwise, I have no objections to any
2 exhibit. What kind of --

3 HEARING OFFICER BROOKOVER: Ms. Swem,
4 Ms. Swem, your opening statement please?

5 MS. SWEM: Thank you. Thank you. Members of
6 the Board of Education, Mr. Brookover, we are here
7 today to provide Dr. Metcalf with his contractual
8 right to a hearing before the Board. The contract
9 does not in any way address what that hearing is to
10 look like. For guidance in that context, we look to
11 the United States Supreme Court's decision in
12 Cleveland versus Board of Education versus Loudermill,
13 frequently known as the Loudermill standard.

14 In that decision the United States Supreme
15 Court stated in a pre-termination hearing, and that is
16 what this hearing is, it is a pre-termination hearing,
17 the employee is entitled to notice of the charges,
18 which were provided in writing to Dr. Metcalf's
19 counsel in August.

20 The employee is entitled for an opportunity
21 to review the evidence upon which the charges are
22 based. Those documents were provided to Dr. Metcalf's
23 counsel last week.

24 The employee is entitled to an opportunity to
25 respond, and that is the purpose of this hearing is

1 for Dr. Metcalf to respond to the charges.

2 As you consider all the information brought
3 forward today in support of the charges, the context
4 of the standard, the context of the information,
5 indeed the context of your decision is the key word.
6 Context. Context.

7 The context for just cause is best captured
8 by the Michigan Supreme Court in Smigel versus
9 Southgate Community School District where the
10 Michigan Supreme Court said just cause to terminate is
11 not defined but, instead, determined on a case-by-case
12 basis. This is not the just cause standard that is
13 used in collective bargaining agreements. Rather,
14 this is an individual employment contract of an
15 executive employee, CEO, superintendent and leader of
16 your school District. So, indeed, you look at just
17 cause as the Michigan Supreme Court said on a
18 case-by-case basis.

19 When we present and argue that termination is
20 appropriate for Dr. Metcalf, we do so in the context
21 of his role as superintendent of the School District
22 and a leader of your staff and students. Context.

23 The 6th Circuit Court of Appeals has said in
24 terms of just cause, that requires the decision maker
25 to exercise business judgment. You're in the business

1 of being trustees for a public school district, and
2 each one of you as individuals and collectively as a
3 body corporate are held up to the standard your chief
4 role is to set policy, administer the budget and
5 supervise the superintendent.

6 And the context here is the superintendent's
7 actions reflect on the Board and reflect on the
8 District. The context here is the superintendent of a
9 public school district and the reasonableness of his
10 actions in the context of that role and that duty.

11 As outlined in the charges which each of you
12 have, as does Dr. Metcalf and the hearing officer, it
13 is our position that Dr. Metcalf's conduct in the
14 context of the time, place and manner in which the
15 conduct occurred presents a basis of just cause for
16 termination.

17 The charges address four different
18 components, the first three coming directly from
19 Dr. Metcalf's contract.

20 Number one, misconduct. And we contextualize
21 the misconduct with the Board of Education's Guiding
22 Principles and Dr. Metcalf's essential leadership
23 role. The Michigan Supreme Court has defined
24 misconduct as an intentional and substantial disregard
25 of an employer's interests or an employee's duties to

1 the employer, Carter versus Employment Security
2 Commission. Again, we look at the actions in that
3 context of the employer's interests, that is the Board
4 of Education's interest in running and operating the
5 Grand Ledge Public Schools.

6 Incompetence. Some may say incompetence.
7 Dr. Metcalf has consistently received highly effective
8 ratings from this Board of Education. Indeed, those
9 Board decisions are offered without objection as
10 evidence proffered by Dr. Metcalf's counsel. We take
11 no issue with that point. Rather, we look at the
12 context of incompetence in the moment, in the moment
13 when Dr. Metcalf wrote the inflammatory Facebook post,
14 and in the moment the following day when he doubled
15 down on the message to parents and high school
16 students.

17 Someone with the training, skill set,
18 education, experience should be familiar with social
19 media and the impact social media can have on an
20 institution such as the Grand Ledge Public Schools.
21 Especially in the context at that time and place of
22 what was going on not just in a national sense or a
23 regional sense but even locally with heightened racial
24 tensions in response to the murder of George Floyd.
25 Context.

1 The third charge is one of inefficiency,
2 again noted in the superintendent's contract. Every
3 one of you experienced that week, that first week of
4 June, hundreds of e-mails, multiple dozens upon dozens
5 of phone calls and other communications, media
6 inquiries and certainly a response by many community
7 stakeholders of strife. The time that it took for you
8 and others to address this situation in that context
9 created enormous inefficiency for the operation of
10 this School District.

11 The single most important charge in our view
12 is that of leadership incapacity. Dr. Metcalf's
13 contract lists and enumerates various reasons for
14 discharge but includes the phrase "any other just
15 cause", and we have characterized that any other just
16 cause as leadership incapacity.

17 Dr. Metcalf's actions and his words alone by
18 itself have rendered him incapable of leading this
19 district as its superintendent.

20 You will receive exhibits, many of which have
21 been included in media reports from statements, public
22 statements by Grand Ledge elected officials that he
23 should resign, by the Grand Ledge Chamber of Commerce
24 stating that he should resign, although I will note
25 that he did not and still serves on the Grand Ledge

1 Chamber of Commerce.

2 Dr. Metcalf's professional association, the
3 Michigan Association of School Administrators, called
4 a special Executive Board meeting seeking his
5 resignation because Dr. Metcalf was the president
6 elect of the statewide Superintendent's Association.
7 He tendered his resignation and again, you will see in
8 the exhibits the statement from his professional
9 association.

10 The Grand Ledge Education Association, as you
11 know, because you were provided information both
12 during the Board meeting as well as a written
13 document, took a vote of no confidence in
14 Dr. Metcalf's ability to lead the school. And you've
15 heard from hundreds of individual stakeholders making
16 similar type comments. You alone as individual Board
17 members are the final arbiter of whether Dr. Metcalf
18 can lead this School District in light of his comments
19 and actions. That is your decision.

20 So context. You have the statement that
21 Dr. Metcalf wrote on Facebook. Both parties have
22 submitted it as an exhibit, and it's important to
23 note, as I think Dr. Metcalf's counsel has already
24 said, look at the context of his comments. It's not
25 just the one snippet. There is an entire dialogue

1 going back and forward with Dr. Metcalf and others.
2 That context is important too. But what rings hollow
3 is the following statement from that document, "It all
4 starts with being a law abiding citizen. Had he not
5 paid with counterfeit money, had he not resisted, had
6 he not been under the influence, then there would be
7 no contact with officers. That does not excuse the
8 officer, it just eliminates the conflict to begin
9 with. It starts with being a good citizen." And I
10 want you to carefully look at the exhibit and its
11 context together.

12 Indeed, Dr. Metcalf notes in that no victim
13 blaming here. But stakeholder after stakeholder after
14 stakeholder in this District shared with you their
15 view that indeed this was victim blaming, and that's
16 why we have to look at the context of the statement.
17 Indeed, for First Amendment purposes it's the
18 equivalent of yelling fire in a crowded theater.

19 MR. DELAPORTE: Objection. Are you kidding
20 me? Yelling fire? No, no, no. There is none of
21 that --

22 HEARING OFFICER BROOKOVER: Mr. Delaporte,
23 you will have your opportunity, as you know.

24 MR. DELAPORTE: There is nothing on the
25 record --

1 HEARING OFFICER BROOKOVER: Mr. Delaporte,
2 you will have your opportunity. Go ahead, Ms. Swem.
3 MS. SWEM: Thank you.
4 HEARING OFFICER BROOKOVER: I'm sorry, what,
5 Mr. Delaporte?
6 MR. DELAPORTE: That is absolutely bunk.
7 HEARING OFFICER BROOKOVER: Thank you. Go
8 ahead, Ms. Swem.
9 **This is Ms. Swem,** MR. DELAPORTE: Thank you. You know because
10 **not Mr. Delaporte** you experienced it as Board members, elected
11 officials, the initial response and then the increased
12 response after Dr. Metcalf sent out a June 1st, 2020
13 e-mail to parents and Grand Ledge High School
14 students. Again, this document is in the exhibit
15 book, but I know you've all seen it and read it. This
16 is the document that many refer to as the double down.
17 Dr. Metcalf did not apologize. He was defiant in
18 defending his comments, and that communication,
19 Dr. Metcalf's words continued to fuel the fire of
20 community outrage and he didn't get it.
21 Subsequently, with the input of the Board
22 president, Dr. Metcalf issued an apology in writing
23 that was disseminated publicly and stated his plan to
24 enroll in diversity and cultural sensitivity classes.
25 During that time, however, that week, public

1 condemnation increased bringing negative publicity to
2 the District through media reports and public
3 protests. Indeed, there were actual protests on
4 school property and you continued to receive multiple,
5 multiple communications from District stakeholders,
6 the majority of which, certainly not all, the majority
7 of which criticized both Dr. Metcalf and this School
8 District and this Board of Education. You see, that's
9 part of leadership with an organization. The leader
10 is connected inextricably to the organization and its
11 governing board. So, Dr. Metcalf's actions were seen
12 as actions endorsed by the Board and actions of the
13 district.

14 You each experienced on June 5th seven hours
15 of public comment. At one point over 600 people were
16 on that Zoom call. Most, certainly not every comment,
17 was critical of Dr. Metcalf, the Board and the
18 district. Again, evidence to demonstrate that
19 Dr. Metcalf is incapable of leading this District.
20 That, that meeting and your minutes reflected in the
21 minutes of that meeting are in the record as exhibits
22 that you took action to place Dr. Metcalf on leave,
23 paid leave. One of the points about being fired is
24 you stop getting paid. Dr. Metcalf had not stopped
25 getting paid and authorizing those charges.

1 As you listen to the information in today's
2 hearing, I want to also remind you what this hearing
3 is not about. This hearing is not about the
4 Open Meetings Act lawsuit filed by Dr. Metcalf's
5 friend, Mike Hoskins, in Eaton County Circuit Court.
6 The issue under the Open Meetings Act is before
7 Judge Cunningham and will be determined in a court of
8 law, not this body.

9 This hearing is also not about the Freedom of
10 Information Act litigation which Dr. Metcalf filed on
11 September 10th. That too is an issue before
12 Judge Cunningham in Eaton County Circuit Court. That
13 is not what this case is about.

14 And while Dr. Metcalf's case will be
15 presented, I'd also note that this is not about
16 community agitators or union conspiracy theories.
17 Those matters are all distractions. The issue before
18 the Board of Education is to focus on Dr. Metcalf's
19 actions, on Dr. Metcalf's words both in the initial
20 post and the double down, and you need to focus on
21 those actions in the context of his role as the
22 superintendent of this School District as its leader.
23 Leaders lead by words and deeds, and that is the
24 ultimate context for your decision making as you hear
25 the information from today's hearing.

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The ultimate question for you, can
Dr. Metcalf continue to lead the Grand Ledge Public
Schools. We submit the answer is no. Thank you.

HEARING OFFICER BROOKOVER: Mr. Delaporte, do
you want to make your opening now or reserve it?

MR. DELAPORTE: I was going to reserve it,
but I'd like to do two things. I'd like to make my
opening and -- you know what, I'll reserve my opening.
I would like to voir dire the decision makers as to
bias.

HEARING OFFICER BROOKOVER: Do you have some
case law about that?

MR. DELAPORTE: It seems to me that under
Michigan law, and I know you ruled under federal law,
but under Michigan law, Michigan still recognizes the
right of an accused to have an unbiased jur --
unbiased fact finders, I'm sorry, unbiased decision
makers at his hearing, administrative hearing, and
that's what this is. The Board are the decision
makers. We ought to know if they have some biases
that would prevent them from ruling fairly and
impartially in this matter.

HEARING OFFICER BROOKOVER: I'm assuming
that's a motion to allow voir dire?

MR. DELAPORTE: Correct.

1 HEARING OFFICER BROOKOVER: Ms. Swem, do you
2 have a response?

3 MS. SWEM: I do have a response. First of
4 all, the hearing officer ruled on Mr. Delaporte's
5 prehearing motion to recuse five of seven Board
6 members. The hearing officer denied that motion in a
7 written statement based on briefs submitted by
8 Mr. Delaporte and myself. The issue of recusal raised
9 by Mr. Delaporte was contextualized about Board member
10 bias. That motion was denied. This appears to be a
11 last minute gasp to reconsider, reconsider that
12 decision by referring to Michigan law, not State (sic)
13 law. Well, there's a very easy response to that one.

14 In the context of due process decisions, the
15 Michigan courts have consistently held that the
16 federal court rulings on due process in the employment
17 context are coterminous. And so we go back to
18 *Loudermill* from the United States Supreme Court as
19 well as the *Farhat* decision, which was briefed and the
20 hearing officer relied on in his ruling, to say
21 *Loudermill* is the legal standard by which these
22 proceedings are run.

23 So, we think *voir dire* is just a back door to
24 address recusal, which this hearing officer has
25 already decided.

1 HEARING OFFICER BROOKOVER: Counsel, let me
2 make it clear for the record, I don't consider
3 anything to be a last minute motion. Mr. Delaporte
4 has the obligation to represent his client as he sees
5 fit, and no doubt he will make motions during the
6 course of the proceedings and the hearing officer will
7 consider the motion.

8 Having said that, Mr. Delaporte, I deny your
9 motion on the basis that it's previously been handled
10 with regard to my decision preliminary --

11 MR. DELAPORTE: With respect --

12 HEARING OFFICER BROOKOVER: Excuse me, excuse
13 me. And it's, again your issue is preserved.

14 MR. DELAPORTE: With respect, it's not your
15 decision according to your ruling. Your ruling allows
16 Dr. Metcalf's team to proffer these issues to the
17 decision maker. Currently, with respect, you are not
18 the decision maker. The decision makers are this
19 Board of Education. That's the same thing with my
20 last motion, both of which have been ruled on by the
21 hearing officer when, in fact, they are directed to
22 the decision maker as is allowed by your ruling. It's
23 clearly laid out in the language of your decision.

24 HEARING OFFICER BROOKOVER: Thank you. My
25 decision speaks for itself and it is denied. You want

1 to reserve your opening statement, correct?
2 MR. DELAPORTE: Correct.
3 HEARING OFFICER BROOKOVER: Ms. Swem, proceed
4 with the proofs please.
5 MS. SWEM: Thank you. For housekeeping
6 matters, I want to direct participants to two
7 notebooks that should be at your table. There's one
8 at the witness table. Mr. Brookover, you have a copy
9 as well, as does Dr. Metcalf's counsel.
10 HEARING OFFICER BROOKOVER: Wait just a
11 minute. I don't want the school Board members to be
12 looking at exhibits at this point. I assume based on
13 Mr. Delaporte's previous statements that he may have
14 some objections to these.
15 MS. SWEM: He may.
16 HEARING OFFICER BROOKOVER: So at this point
17 I don't want those to be examined please.
18 MS. SWEM: That's fine. I just want to as a
19 housekeeping matter make sure that everybody has them
20 with Mr. Brookover's directive. There are two
21 notebooks. The first volume is in blue and contains
22 Exhibits A through M. The second volume is a larger
23 white notebook is Exhibit N, which reflects the
24 e-mails and communications produced in response to one
25 of Dr. Metcalf's FOIA requests, and we'll make our

1 offerings on a case-by-case basis, but I wanted
2 everybody to make sure they know what they have.

3 With Mr. Brookover's guidance, what I am
4 going to do, I think it will be the most efficient
5 way, is to briefly describe each exhibit and the basis
6 for authentication and relevance, of course, and then
7 pause and give Mr. Delaporte an opportunity to
8 respond. Is that amenable to you, Mr. Brookover?

9 HEARING OFFICER BROOKOVER: That's fine with
10 me if it's fine with Mr. Delaporte. Is that fine with
11 you?

12 MR. DELAPORTE: As long as we don't get into
13 the details, we're fine with that.

14 MS. SWEM: Thank you. So Board members,
15 please keep in mind Mr. Brookover's direction not to
16 look. We've identified, as has Dr. Metcalf's counsel,
17 our exhibits by letters.

18 The first exhibit is Dr. Metcalf's employment
19 contract.

20 HEARING OFFICER BROOKOVER: Mr. Delaporte,
21 can we stipulate to that?

22 MR. DELAPORTE: Is the employment contract
23 the one that was signed on December 19th?

24 HEARING OFFICER BROOKOVER: Yes, sir.

25 MR. DELAPORTE: Yes.

1 MS. SWEM: Thank you. Item B is --
2 HEARING OFFICER BROOKOVER: Let me just say
3 for the record that Exhibit A is admitted.
4 MS. SWEM: Thank you. Exhibit B is
5 Grand Ledge Public School's Governance Policy E100.
6 HEARING OFFICER BROOKOVER: Mr. Delaporte,
7 can you stipulate to that?
8 MR. DELAPORTE: I am not sure what the
9 relevance is. He didn't violate it, so I'm not sure
10 why it's being admitted.
11 HEARING OFFICER BROOKOVER: Ms. Swem?
12 MS. SWEM: Thank you. It's specifically
13 referenced in the charges, and in the charges the
14 statement is that Dr. Metcalf's action was contrary to
15 a statement in that governance policy, so I think the
16 relevance is established.
17 HEARING OFFICER BROOKOVER: This is also a
18 document kept in the regular course of business in the
19 Grand Ledge Public Schools?
20 MS. SWEM: Yes.
21 HEARING OFFICER BROOKOVER: It's admitted.
22 MS. SWEM: The next document, C, is the
23 complete set of comments on Facebook from May 30th,
24 2020. I note that the same exhibit is offered by
25 Dr. Metcalf. Obviously, the relevance of this exhibit

1 goes to a very significant component of the charges.

2 HEARING OFFICER BROOKOVER: Mr. Delaporte,
3 stipulation for it?

4 MR. DELAPORTE: We stipulate for it --

5 HEARING OFFICER BROOKOVER: You're going to
6 have to speak into the mic every once in a while.

7 MR. DELAPORTE: We stipulate to its
8 admittance.

9 HEARING OFFICER BROOKOVER: Thank you. It's
10 admitted.

11 MS. SWEM: The next document is document D.
12 This was the statement issued by Dr. Metcalf and sent
13 to Grand Ledge parents and high school students under
14 the heading Local Leader Says Stop!! End The
15 violence!! That is the document I referred to in my
16 opening statement as the double down. It's relevance
17 is obvious.

18 HEARING OFFICER BROOKOVER: Stipulation,
19 Mr. Delaporte?

20 MR. DELAPORTE: Not a chance. This was not
21 submitted or published by Dr. Metcalf. This statement
22 was, in fact, prepared in great part and submitted and
23 published by Mr. Ellsworth, the District's
24 communications director. It was done at his urging,
25 and we do not stipulate that this is Dr. Metcalf's

1 statement.

2 HEARING OFFICER BROOKOVER: Ms. Swem?

3 MS. SWEM: First of all, the statement itself
4 is relevant, as I previously stated. It can be
5 authenticated by Mr. Ellsworth, who is called as a
6 witness by Dr. Metcalf. Dr. Metcalf can authenticate
7 the document and, indeed, under Michigan Rule of
8 Evidence 902(6) it's self-authenticating in the
9 context of that it was published in local newspapers.
10 That was also a decision upheld by Federal District
11 Court in Shell Oil versus Kleppe, which mirrors
12 Michigan Rule of Evidence 902(6), which permits a
13 court to take notice of statements in newspaper
14 articles without the necessity of authentication. So
15 we have relevance, and we have witnesses here who can
16 authenticate it, and we have additional legal
17 authority for its admission.

18 MR. DELAPORTE: I believe that Ms. Swem is
19 missing the key point. It was not published by
20 Dr. Metcalf. There is no relevance because he did not
21 on his own say, hey, I want to publish this. He
22 didn't publish it. Dr. Ellsworth published it. He is
23 the director of communications for the District.
24 Whether it is admissible is irrelevant if it doesn't
25 first pass the relevancy test. They have proffered it

1 as a statement by Dr. Metcalf. It was not a statement
2 by Dr. Metcalf. In fact, the vast majority of these
3 statements that they are relying on to throw
4 Dr. Metcalf under the bus have not been written by
5 Dr. Metcalf, were not authorized by Dr. Metcalf. I
6 mean, they've got all kinds of problems, but the
7 primary problem with this is this is not a statement
8 by Dr. Metcalf. This was not published to newspapers
9 by Dr. Metcalf. This was not in any way, shape or
10 form e-mailed by Dr. Metcalf. There is a foundational
11 relevance issue here.

12 HEARING OFFICER BROOKOVER: Is this the
13 subject, is this a subject of the charges?

14 MS. SWEM: Yes.

15 MR. DELAPORTE: Yes, it is. There are
16 several of these statements that they've made the
17 basis of their charges which have no connection to
18 Dr. Metcalf.

19 HEARING OFFICER BROOKOVER: I'm going to
20 admit it as a business record and because it's
21 referred to I believe in the charges. I am not
22 passing nor could I pass on the issue of whether
23 Dr. Metcalf is responsible for it. So it's admitted
24 with that condition, and the attorneys will have to
25 speak to this exhibit with regard to its gravamen with

1 regard to the charges against Dr. Metcalf.
2 MS. SWEM: Shall I continue?
3 HEARING OFFICER BROOKOVER: Please.
4 MS. SWEM: Thank you. Next is item E which
5 is Dr. Metcalf's apology. There are two pages to this
6 document. One is the e-mail from Dr. Metcalf to Board
7 members stating the statement will go out at ten. The
8 second page is the document itself attributed to
9 Dr. Brian Metcalf and certainly again published by
10 local media and sent to students, parents in the
11 Grand Ledge community.
12 HEARING OFFICER BROOKOVER: Stipulation,
13 Mr. Delaporte?
14 MR. DELAPORTE: Absolutely not. Again,
15 although I already know your answer, there is no
16 connection to Dr. Metcalf except for it was forced on
17 him and he agreed to it as part of discipline given to
18 him by the Board of Education. Can we spell double
19 jeopardy, just out of curiosity? This apology was
20 dictated by the Board of Education to him. It was
21 then published by the District. It was then forwarded
22 to newspapers by the District. The very terms of this
23 apology that was so appalling and started out this
24 whole explosion allegedly within the community was the
25 responsibility of that Board. They caused these

1 problems.

2 HEARING OFFICER BROOKOVER: Excuse me.

3 Excuse me.

4 MR. DELAPORTE: They caused the mob to
5 collect, and now they are trying to use those
6 documents that they authored, that they provided to my
7 client as a fait accompli, you will accept this as
8 your discipline, and now they are trying to use it to
9 fire him because the mob didn't like the Board's
10 words, the Board's decision.

11 This is a kangaroo court if I've ever seen
12 it. It's absolute bunk.

13 HEARING OFFICER BROOKOVER: I understand your
14 objection, sir. You've made it effectively for the
15 record. Is this Mr. Metcalf's e-mail?

16 MR. DELAPORTE: I'm sorry, which one are you
17 looking at?

18 HEARING OFFICER BROOKOVER: E.

19 MS. SWEM: Well, it is E. It is also --

20 HEARING OFFICER BROOKOVER: Excuse me,
21 counsel. Counsel, excuse me.

22 MR. DELAPORTE: This is not. This is an
23 e-mail from Benjamin Cwayna to Abbey Schaefer.

24 HEARING OFFICER BROOKOVER: The School
25 District's E.

1 MR. DELAPORTE: Yes, I'm looking at the
2 School District's E.
3 HEARING OFFICER BROOKOVER: From
4 Brian Metcalf.
5 MR. DELAPORTE: Hold on, I'm sorry, I got the
6 wrong E. I apologize. We should have probably
7 decided to one of us number them in numbers and one in
8 letters.
9 That is his agreement to previous, and those
10 e-mails and text messages in our exhibits where the
11 Board had come to an agreement. Ms. DuFort personally
12 on the telephone dictated the terms and he said yes.
13 That's the statement that will go out at 10:00. That
14 was him confirming his understanding of what was going
15 on. He did not author this piece. That is quite
16 clear in the, in the, excuse me, in the text messages.
17 Those are in our, in our exhibits at, give me a
18 second, both at Exhibit C and Exhibit M.
19 HEARING OFFICER BROOKOVER: Ms. Swem, are you
20 indicating that this exhibit has also been submitted
21 by the Respondent?
22 MS. SWEM: Correct. If you look under tab D
23 of Dr. Metcalf's notebook, it does not include
24 Dr. Metcalf's e-mail, but it does include the
25 statement at Exhibit D.

1 MR. DELAPORTE: As dictated to him by the
2 president. I think you can just lean right and ask
3 the president. I'm sure the president wouldn't lie.
4 She would say yes, I dictated that to Brian Metcalf.

5 HEARING OFFICER BROOKOVER: Wouldn't these
6 documents then be relevant as to your argument of
7 prior discipline?

8 MR. DELAPORTE: They would be to our
9 argument, but they are not proof. What she's trying
10 to do is have them admitted as proof of the statement
11 that he allegedly put out to the community newspapers,
12 et cetera. The problem with that is it wasn't his
13 statement, it was the Board's statement. There's a
14 ton of evidence to that. There are e-mails, there are
15 text messages. They were again violating the Open
16 Meetings Act when all seven of them were talking on
17 text message and e-mail. They prepared the statement.
18 They included demands by certain of the Board members.
19 They put it together. Ms. DuFort went ahead and
20 dictated to him. There were other people on his end
21 of the line in the room that we can call if we have
22 to, but the bottom, if she's not willing to admit it,
23 but the bottom line is this was never a statement by
24 my client. He did not publish that statement. It did
25 not go to the press on his behalf. It did not go to

1 the community on his behalf. This was purely a
2 decision by the Board of Education.

3 I don't mind it being admitted for the
4 purpose that it was a statement created by the Board
5 of Education and dictated to my client, but I'm not
6 stipulating to it being introduced for the purpose of
7 showing somehow that my client was the one who put
8 this out, who inflamed the crowd, the community,
9 et cetera.

10 HEARING OFFICER BROOKOVER: All set? It's
11 admitted as a business record and the attorneys can
12 speak to or argue about its significance or relevance
13 with regard to their specific arguments.

14 MS. SWEM: Next is item F, which is
15 Dr. Metcalf's e-mail from June 5th of 2020 and his
16 statement to the Board of Education regarding this
17 matter, a total, total comments of I believe four
18 pages. This is from Dr. Metcalf to the Board
19 regarding the matter of issue today. Certainly
20 Dr. Metcalf can authenticate it if that's necessary.

21 HEARING OFFICER BROOKOVER: Mr. Delaporte,
22 stipulated?

23 MR. DELAPORTE: We need one moment.

24 HEARING OFFICER BROOKOVER: Sure. It's her F
25 from her notebook.

1 MR. DELAPORTE: We're looking at it. If it's
2 being entered as a private statement that Dr. Metcalf
3 made to the Board of Education, including asking them
4 to hold the June 5th hearing in closed session, yes,
5 we would.

6 HEARING OFFICER BROOKOVER: Well, it's
7 admitted.

8 MS. SWEM: Next is item G. This document is
9 a letter to the Grand Ledge School Board and it is
10 from various elected officials, their names at the
11 bottom of the letter, and it came to the District
12 through the District's Share Our Schools portal.

13 It is relevant because it's specifically
14 referenced in the charges as it reflects stakeholder
15 concern about Dr. Metcalf's leadership in light of his
16 comments.

17 It can be authenticated, and we have an
18 affidavit from Kim Manning, who is present if needed
19 to authenticate how this document came to the School
20 District. We submit it's also a school business
21 record and one that Board members received and relied
22 on.

23 HEARING OFFICER BROOKOVER: Mr. Delaporte.

24 MR. DELAPORTE: They may be able to
25 authenticate that it came through a particular portal

1 but they can't with just Kim Manning authenticate that
2 this document is actually what it purports to be. So,
3 we would object on that grounds. Unless they plan on
4 producing the people here who made these statements,
5 then its only purpose is that it arrived, and if it
6 arrived, it arrived, but it could have been written by
7 a three year old for all we know, a very eloquent
8 three year old but --

9 HEARING OFFICER BROOKOVER: So you
10 acknowledge for the record this arrived through the
11 School District's communication portal?

12 MR. DELAPORTE: I am willing to stipulate to
13 that portion, yes.

14 HEARING OFFICER BROOKOVER: Do you contest
15 that this was actually a statement made by these
16 people?

17 MR. DELAPORTE: I do, and I would point out
18 that when -- actually, I'm sorry, I'm not going to
19 stipulate this came through the portal, I apologize.
20 And the reason is that the District, I'm sorry,
21 Dr. Metcalf FOIA'd all of the documents that had come
22 in of this nature, and this was not provided to
23 Dr. Metcalf as part of the FOIA. So we have serious
24 questions about how this suddenly appeared when the
25 FOIA response did not contain this document but

1 specifically referenced these types of documents.

2 HEARING OFFICER BROOKOVER: It's admitted as
3 being received by the School District and referred to
4 either explicitly or implicitly in the charges. Do
5 you have an H?

6 MS. SWEM: Exhibit H is a June 5th press
7 release from the Grand Ledge Chamber of Commerce.
8 This is a document that states by its title,
9 Grand Ledge Chamber of Commerce Asks Metcalf to
10 Resign. At the time Grand Ledge Chamber of Commerce
11 Board president was Dr. Metcalf.

12 We offer this because it's specifically
13 referenced in the charges as another example of
14 community outcry regarding Dr. Metcalf's leadership.
15 I want to note, however, that Dr., just for full
16 context, Dr. Metcalf did not resign and continues to
17 serve in that capacity. Nonetheless, this statement
18 issued June 5th by the Chamber press release is
19 offered for the purpose of reflecting the Chamber's
20 decision at that day and time.

21 It is also a record under Michigan Rule of
22 Evidence 902(6) for self-authentication. It was
23 referenced in the local newspaper. The Shell Oil
24 decision I referred to early also permits a court to
25 take notice of statements and newspaper articles

1 without necessity of authentication.

2 HEARING OFFICER BROOKOVER: Mr. Delaporte.

3 MR. DELAPORTE: I obviously don't have that
4 case in front of me since counsel didn't provide it,
5 but I believe, if my memory is correct, that the court
6 was speaking of statements by a party opponent. But
7 regardless --

8 HEARING OFFICER BROOKOVER: I'm sorry, I
9 didn't catch that, by a party what?

10 MR. DELAPORTE: Opponent.

11 HEARING OFFICER BROOKOVER: Opponent?

12 MR. DELAPORTE: However, it kind of becomes
13 immaterial because there's no relevance to this
14 document. The Board of Education or, excuse me, the
15 Chamber Board met, listened to Dr. Metcalf explain his
16 Facebook statement, found it to be proper and
17 appropriate and retained him as the president, and you
18 can look on the Chamber website to find that. It
19 sounds like even the Board's counsel here is admitting
20 that he was retained. So I am not sure of the
21 relevance. Anybody can become mad over a statement
22 and then hear the truth and say, oh, yeah, that's not
23 what we thought it was and go ahead and retain the
24 person.

25 HEARING OFFICER BROOKOVER: I'm going to deny

1 the admission of this. Both parties seem to agree
2 that Dr. Metcalf is still at least affiliated with the
3 Chamber of Commerce and that the Chamber of Commerce,
4 in fact, did not force Dr. Metcalf to resign, which
5 seems to be the case, then I don't see the relevance.
6 Next one, counsel?

7 MS. SWEM: I. This document is an e-mail
8 from Melissa Mazzola who is vice president of the
9 Grand Ledge Education Association. This e-mail was
10 sent to individual Board members. It was also
11 referenced in the June 5th Board meeting when the
12 Association president made public comment to the Board
13 and referenced the Association's vote of no confidence
14 in Dr. Metcalf's ability to lead the School District.
15 It's referenced in our charges. We have an affidavit
16 from Ms. Mazzola to authenticate it, if necessary.
17 She was also being called as a witness by Dr. Metcalf
18 and can testify to it. Finally, because it was
19 referenced in the Board meeting, it's a business
20 record under MRE 803(6).

21 HEARING OFFICER BROOKOVER: Mr. Delaporte.

22 MR. DELAPORTE: Well, I would contest that
23 it's a business record. This is a record of a union
24 action, not a business record for this District and
25 not a business record for this Board of Education.

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The affidavit is inadmissible because Ms. Mazzola is here and can be called to authenticate the document, so the affidavit cannot be admitted. We would object without the testimony of Ms. Mazzola.

I would also note that Dr. Metcalf FOIA'd the underlying information related to this document and the alleged vote of no confidence, and his request was rejected. They refused to provide that information.

It's just another example of this Board of Education and their counsel hiding things from Dr. Metcalf and preventing him from being able to defend himself. There are many examples, and this is a glaring one.

HEARING OFFICER BROOKOVER: The exhibit appearing to have been received by Ms. DuFort in the regular course of her duties as the Board president and as a member of the Board, elected official, it will be admitted and again, counsel will have the opportunity to argue about its significance, if any.

MS. SWEM: Thank you. Next is item J.

MR. DELAPORTE: May I one second, I would like to request that the hearing officer require the Board's counsel to bring Ms. Mazzola forward and authenticate the document before using it in their case.

1 HEARING OFFICER BROOKOVER: Do you have some
2 case law that stands for the proposition that I can
3 require any witness?

4 MR. DELAPORTE: You have the power given to
5 you by this Board to rule on procedural matters. The
6 affidavit is invalid because she is here in person
7 and, therefore, no one has authenti -- Ms. Dufort has
8 not authenticated this document. No one has
9 authenticated this document. So it is well within
10 your power, given the power that you were provided by
11 the Board of Education, to make a ruling necessitating
12 authentication.

13 It's not that I am demanding that you order a
14 witness to the stand, what I am requesting is that
15 authentication be done prior to its use in this
16 matter. If they can do it without Ms. Mazzola, if
17 they can do it through somebody else or some other
18 method, that's fine, but right now this is really an
19 unauthenticated document.

20 HEARING OFFICER BROOKOVER: I've made my
21 ruling for the record. I understand. Proceed.

22 MS. SWEM: Thank you. Item J is a statement
23 from the Michigan Association of Superintendents &
24 Administrators Executive Board on June 5th, 2020, and
25 it reflects that Board's acceptance of Dr. Metcalf's

1 resignation. He was president elect of that
2 Association at the time.

3 The document, we do have an affidavit from
4 Chris Wigent, who at the time was the executive
5 director of MASA. He is not here today and available
6 to testify, but we do proffer Mr. Wigent's affidavit
7 that meets the requirements of authenticity under the
8 Rules of Evidence.

9 HEARING OFFICER BROOKOVER: May I see the
10 affidavit please?

11 MS. SWEM: You may.

12 HEARING OFFICER BROOKOVER: Do you have a
13 copy for Mr. Delaporte? Do you also have a copy for
14 the court reporter? Mr. Delaporte?

15 MR. DELAPORTE: We object as to relevance.

16 HEARING OFFICER BROOKOVER: Madam court
17 reporter, would you mark this as the next exhibit for
18 the Charging Party?

19 MS. SWEM: I believe that's Exhibit O.

20 HEARING OFFICER BROOKOVER: Exhibit O.

21 (Charging Party Exhibit O
22 marked for identification.)

23 HEARING OFFICER BROOKOVER: Mr. Delaporte,
24 you are not saying this didn't happen, correct?
25 You're just arguing about the relevance?

1 MR. DELAPORTE: Correct.

2 HEARING OFFICER BROOKOVER: The Exhibit J is
3 denied, but Exhibit, I'm sorry, O?

4 COURT REPORTER: Yes.

5 HEARING OFFICER BROOKOVER: Is admitted based
6 on the affidavit submitted for Mr. or Ms. Wigent.

7 MS. SWEM: Wigent.

8 HEARING OFFICER BROOKOVER: Wigent, thank
9 you.

10 MS. SWEM: And the basis of the denial? You
11 said you denied admission of J, and the basis for your
12 denial?

13 HEARING OFFICER BROOKOVER: It wasn't
14 authenticated, and I don't have any evidence to what
15 it is exactly, but with Exhibit O, Exhibit O is
16 admitted which has the statement.

17 MS. SWEM: Just a moment. Gotch 'ya, okay.
18 But you are admitting O?

19 HEARING OFFICER BROOKOVER: Yes, ma'am.

20 MS. SWEM: Next exhibit is a letter from
21 Michigan State University's Department of Educational
22 Administration addressing this situation with
23 Dr. Metcalf. It speaks to the importance of,
24 significance, I should say, of the comments made by
25 Dr. Metcalf in his role as superintendent, and a copy

1 of this letter was attached to an e-mail that came in
2 through the District's Share With Our Schools portal.
3 If need be, Kim Manning, the executive secretary, can
4 testify about that from an authentication perspective.

5 This is a document that because it went
6 through the portal then went to all Board members and
7 was considered at that time. It shows a reaction by
8 university colleagues about the circumstances.

9 HEARING OFFICER BROOKOVER: Some university
10 colleagues.

11 MS. SWEM: Thank you.

12 HEARING OFFICER BROOKOVER: Correct.

13 MS. SWEM: Correct. Thank you for that
14 clarification.

15 HEARING OFFICER BROOKOVER: I think there's a
16 lot more university employees than these.

17 MS. SWEM: Absolutely.

18 HEARING OFFICER BROOKOVER: Mr. Delaporte.

19 MR. DELAPORTE: The fact that it came through
20 the portal is not the issue when it comes to
21 authentication. The issue is whether it was actually
22 written by all these people and the purpose for
23 writing it and what they saw when they decided to
24 write this. There's about a thousand questions that
25 need to be asked about this document. It is not

1 self-authenticating, and I would note that Mr. Chapin
2 is here and could testify to it or authenticate it if
3 it is, in fact, his work and, therefore, should be
4 required to do so.

5 HEARING OFFICER BROOKOVER: Your objection is
6 made for the record. I'm going to admit this. As a
7 practical matter, with some exceptions because of the
8 charging document and the opening statement, I believe
9 communications directed to the School District through
10 normal avenues of communication are admissible in this
11 hearing because they were received as part of the
12 duties of the school Board and as part of the duties
13 of the School District. So, given the charges that
14 are before the school Board, I believe those
15 communications in general are relevant and can be
16 admitted and are subject to Respondent's argument
17 about the significance or lack of significance of
18 those particular documents and communications and
19 whether, in fact, the Board should have or could have
20 examined those documents in a more discerning fashion
21 before it made any decisions with regard to
22 Dr. Metcalf's employment.

23 Next, Ms. Swem.

24 MS. SWEM: Thank you. Next is Exhibit L
25 which reflects the Board of Education minutes of its

1 special meeting of June 5th, 2020. The minutes
2 themselves are 16 pages in lengths with attached
3 prepared statements from some Board members and
4 reflect the statements, briefly reflect the statements
5 of persons who made public comment at that meeting.
6 This is a business record of the Board of Education of
7 the Grand Ledge Public Schools. It is admissible
8 under the hearsay exception of the MRE 803(6) as this
9 is a record of regularly conducted activity.
10 Kim Manning is the records custodian as the executive
11 secretary for the District, is also here to testify,
12 if needed, on the authentication.

13 Clearly, the relevance is appropriate.
14 Indeed, Dr. Metcalf's counsel has talked repeatedly
15 about actions taken at the June 5th meeting.

16 HEARING OFFICER BROOKOVER: Mr. Delaporte.

17 MR. DELAPORTE: I've talked about actions
18 that were taken at the June 5th meeting that the Board
19 of Education has conveniently left out of these Board
20 minutes. So I'm not sure that my speaking to all the
21 things that the Board did that day and, in violation
22 of the Open Meetings Act, chose not to include in the
23 Board minutes is somehow authenticating this document.

24 HEARING OFFICER BROOKOVER: So you do not
25 stipulate to the Board minutes of the meeting of June

1 5th, 2020?

2 MR. DELAPORTE: We stipulate that they are a
3 partial record of the June 5th meeting. There were
4 numerous violations of the Open Meetings Act, there
5 were numerous things left out of the Board minutes.
6 So, to stipulate that they are the Board minutes of
7 the special meeting, I can't stipulate to that because
8 these are only a partial record.

9 HEARING OFFICER BROOKOVER: My question is
10 are you stipulating to the admission of these minutes?

11 MR. DELAPORTE: I am stipulating to the
12 admission as long as it is, it is entered as a partial
13 record of that meeting. If it is being introduced as
14 the full record of that meeting, then I would object
15 strenuously.

16 HEARING OFFICER BROOKOVER: Exhibit L is
17 admitted.

18 MR. DELAPORTE: Mr. Brookover, are we
19 following the Rules of Evidence or not because it
20 seems like half the time we follow the Rules of
21 Evidence and then when the other side has a huge hole,
22 we go ahead and ignore the Rules of Evidence. Are we
23 following, is this subject to the Rules of Evidence?

24 HEARING OFFICER BROOKOVER: This is a
25 pre-termination contractual hearing, counsel. Next.

1 MR. DELAPORTE: That is a no.

2 MS. SWEM: Thank you. I would also note for
3 the record that these minutes continue to be available
4 on the Board of Education's website --

5 HEARING OFFICER BROOKOVER: Counsel, we're
6 not arguing about that anymore.

7 MS. SWEM: I understand. I was just going to
8 ask --

9 HEARING OFFICER BROOKOVER: Can we move to
10 the next exhibit please?

11 MS. SWEM: Yes. The next is Exhibit M.
12 These are copies of news articles regarding the
13 fallout and the backlash regarding Dr. Metcalf's
14 comments. These news articles are admissible under
15 Michigan Rule of Evidence 902(6). They are
16 self-authenticating because they are printed materials
17 purporting to be newspapers or periodicals, and they
18 list the origin and meet that requirement under the
19 Rules of Evidence. They are being offered for the
20 relevance purpose, and they are related to the charge
21 about community outcry.

22 HEARING OFFICER BROOKOVER: I'm sorry, what's
23 the rule cite cited?

24 MS. SWEM: I'm sorry, 902(6).

25 MR. DELAPORTE: Could we take, by any chance

1 a break for five minutes?

2 HEARING OFFICER BROOKOVER: We can take five
3 minutes. Could you just respond?

4 MR. DELAPORTE: I would not concede the
5 relevance issue. The fact that something is covered
6 in a particular way in the newspaper does not go to
7 whether Mr. Brian Metcalf, Dr. Brian Metcalf is
8 competent to act in the position of superintendent.

9 Newspapers are written sometimes shading one
10 way or the other depending on their readership. I
11 don't think anybody without, with a straight face can
12 say that somehow a newspaper report is a neutral
13 commentary on what is happening and somehow goes to
14 prove or disprove certain actions by the
15 superintendent or whether he is competent or whatever
16 the case may be. You have in this area certain news
17 organizations that are bias one way or the other on
18 certain issues, and we don't need to get into that. I
19 mean, I'm just not sure what the relevance of this is.
20 Yes, it was covered in the paper. We'll stipulate
21 that the issue was covered in the papers. We are not
22 stipulating that that has some relevance as to
23 Dr. Metcalf's competency.

24 HEARING OFFICER BROOKOVER: Well, I've looked
25 at the rule, and I do believe the rule covers these.

1 However, I tend to agree with Mr. Delaporte, and I've
2 read these exhibits, and I am not sure that based on
3 my limited knowledge of the situation that these
4 reports are even accurate.

5 So, with counsel's stipulation that there
6 were news articles concerning this here in Grand
7 Ledge, I'm going to deny admission of this particular
8 document because I don't see the relevance, but
9 counsel has stipulated for the record that there were
10 news articles concerning this.

11 Why don't we take a 15-minute break? Does
12 that work for everybody?

13 MS. SWEM: That's fine.

14 HEARING OFFICER BROOKOVER: Thanks for the
15 suggestion, counsel.

16 (A short break was taken.)

17 HEARING OFFICER BROOKOVER: Let's proceed.
18 Ms. Swem, what's next?

19 MS. SWEM: We're going to hear from
20 Ms. Starlin on Exhibit N.

21 MS. STARLIN: Exhibit N is in the white
22 binder. Despite the number of pages, it's all one
23 exhibit. These are community e-mails that were
24 forwarded to the Board by Kim Manning. The majority
25 of those records came in through the District's Share

1 With Our Schools portal. They were all directed to
2 the Board and they were forwarded to each individual
3 Board member. They certainly assisted the Board in
4 hearing the community's response to Dr. Metcalf's
5 comments, and we would, therefore, assert that they
6 are relevant. If necessary, Kim Manning is also here.
7 She is the one who manned that portal and forwarded
8 each and every one of these to the Board of Education.

9 HEARING OFFICER BROOKOVER: Mr. Delaporte.

10 MR. DELAPORTE: If this is being offered to
11 show the community's response, they've got problems
12 because about half of these are from members not in
13 the community. Some of them, and many of them, by the
14 way, are duplicates.

15 So yes, we would object on relevance since,
16 as I said, about half of them are not from community
17 members and a good chunk of them are duplicates. If
18 they want to weed out the exhibits, weed them down to
19 just the community members, one copy each, we would be
20 more than happy to stipulate for the purpose, by the
21 way, that they were received, you know, through a
22 portal, obviously not having been authenticated by the
23 authors.

24 HEARING OFFICER BROOKOVER: I have a
25 question. I have gone through these, and I understand

1 that these have been received through the portal.
2 I've already indicated previously I felt that
3 communications made to the School District are
4 admissible. However, page 320 has a letter from a
5 superintendent of schools in Holt, and I don't see how
6 that came through the portal. I may not, I may just
7 be too ancient to understand the e-mail chain here
8 but, Ms. Swem, if you can explain that to me how
9 that --

10 MS. STARLIN: Yes, I can, Mr. Brookover.

11 HEARING OFFICER BROOKOVER: Thank you.

12 MS. STARLIN: The portal itself does have a
13 method by which anybody can attach an image, a
14 document, or I guess some other record.

15 If you look beginning at page 841, those are
16 the majority of the attachments. So you can type a
17 message into the portal, and then it says would you
18 like to attach something. That's the majority of what
19 was attached. However, there were some instances
20 where people attached something within the body of the
21 Share With Our Schools message as opposed to using the
22 attachment link, and I believe that this letter from
23 Holt was attached within the body of the message.

24 HEARING OFFICER BROOKOVER: But at this point
25 you can't track how it was attached or who attached it

1 or anything like that? At this point you can't
2 specify who attached this or how it was attached?

3 MS. STARLIN: Not right this second. I can
4 take a look.

5 HEARING OFFICER BROOKOVER: I'm going to
6 exclude that page. And then relative to
7 Mr. Delaporte's criticism about their being
8 duplicates, do I now understand that starting at page
9 841 there are -- people access the portal and can make
10 attachments, and did you also then say that the prior
11 800 pages are essentially attachments from those
12 messages?

13 MS. STARLIN: The first 840 pages are the
14 actual messages that were typed into the portal.
15 There's a link on the portal that says attach
16 something or gives the user the option to attach
17 something, and these are, the majority of them are
18 screen shots of the Facebook comment, but various
19 people attached photographs to their comments and,
20 unfortunately, you have to match up the identification
21 number at the top of each image on page 841 through
22 the end to the noted attachment within the body of the
23 message. So, if you look, for example, on page 636,
24 you can see there's that add attachments and then
25 there's the link. It says, FB_IMG_1591033316005.

1 That is the attachment at page 899.

2 HEARING OFFICER BROOKOVER: Okay. Well, I
3 think I understand what you just said. I'm not going
4 to admit page 320 because, A, I don't think what some
5 other school district is or isn't doing is relevant
6 and, B, I have a question with regard to -- this is
7 all one exhibit, right?

8 MS. STARLIN: Yes.

9 HEARING OFFICER BROOKOVER: Page 901 through
10 914, excuse me, 915, what is that? Where did that
11 come from?

12 MS. STARLIN: That is an attachment. It
13 looks like, I think it is the message from a community
14 member that begins at page 18. They reference what
15 another school district is doing, and they attached
16 that document to their message. It's not offered to
17 say what should or shouldn't happen in Grand Ledge,
18 it's just offered for the sake of completeness.

19 HEARING OFFICER BROOKOVER: I'm going to
20 exclude pages 901 through 915 on the same basis. I
21 think what some other school district does or doesn't
22 do is irrelevant and is potentially prejudicial to
23 Dr. Metcalf's interests in this hearing. I'll exclude
24 those. With those exceptions, the rest of the exhibit
25 is admitted with the representation that all of this

1 was submitted to the school Board?
2 MS. STARLIN: Yes.
3 HEARING OFFICER BROOKOVER: Ms. Swem.
4 MS. SWEM: Thank you. That concludes our
5 review of exhibits with your rulings noted.
6 HEARING OFFICER BROOKOVER: I'm sorry, I want
7 to make sure for the record, the last exhibit was N?
8 I may have misspoken myself.
9 MS. SWEM: N as in no, N.
10 HEARING OFFICER BROOKOVER: Go ahead.
11 MS. SWEM: That's fine. That concludes our
12 submission of exhibits with your rulings noted.
13 HEARING OFFICER BROOKOVER: All right.
14 Anything else in your case in chief?
15 MS. SWEM: Yes. Now that the exhibits have
16 been addressed and, consistent with your rulings, I
17 would like to take the Board members through some of
18 those documents except for the ones you denied. So,
19 how do you want to proceed? Do you want the ones you
20 denied physically removed from their notebooks?
21 HEARING OFFICER BROOKOVER: Yes.
22 MS. SWEM: Okay. In the interest of
23 efficiency, I'm going to, and you can each check me
24 based on notes from your rulings, ask Board members to
25 go to the following tabs and remove the documents as

1 indicated.

2 HEARING OFFICER BROOKOVER: Perhaps
3 Dr. Chapin could approach the Board and receive those
4 extracted documents so they are not before the Board.

5 MS. SWEM: I will ask counsel and the hearing
6 officer to make sure I am accurate.

7 I believe the first denial of admission is
8 letter H, the Grand Ledge Chamber of Commerce press
9 release. The next is Exhibit J, the MASA Board of
10 Directors press release. When we have our next break
11 we will make for the Board's exhibit book a copy of
12 what the hearing officer has identified as Exhibit O,
13 which is the affidavit of Chris Wigent, the MASA
14 executive director, and that document the hearing
15 officer ruled as admitted. The hearing officer and
16 Mr. Delaporte and the court reporter have copies of
17 that document and we will make sure that goes into the
18 Board exhibit book.

19 The next exhibit is M and, Mr. Brookover, I
20 want to make sure I got your ruling correct. Based on
21 Mr. Delaporte's stipulation that there were indeed
22 news articles about the events, you ruled that M was
23 not admitted, is that correct?

24 HEARING OFFICER BROOKOVER: Correct.

25 MR. DELAPORTE: Correct.

1 MS. SWEM: Thank you. M, please remove those
2 copies of news articles. According to my notes, those
3 are the -- we're finished with removing exhibits from
4 the exhibit book. Other than the pages, thank you, in
5 the larger notebook, yes. Thank you. Let's go to
6 those. There are some documents in that notebook to
7 be excluded. The first one is on page 320. These
8 documents are all Bates stamped, so you'll see the
9 page number at the bottom.

10 HEARING OFFICER BROOKOVER: Bates stamp is a
11 fancy name that attorneys use for stamping numbers on
12 the bottom of exhibits. I believe at the break they
13 can make a copy of the other page of that.

14 MS. SWEM: And then --

15 MR. DELAPORTE: And 320 --

16 HEARING OFFICER BROOKOVER: I can't hear you.

17 MR. DELAPORTE: I believe 320 is a duplicate.

18 HEARING OFFICER BROOKOVER: Give me a second,
19 will you please? Do you see it someplace else also?

20 MR. DELAPORTE: Correct.

21 HEARING OFFICER BROOKOVER: Do you have a
22 page number?

23 MR. DELAPORTE: I will in a second. I think
24 it's 324.

25 HEARING OFFICER BROOKOVER: You're correct.

1 So 324 will also be excluded. Thank you. I assume it
2 was your client that figured that one out.

3 MR. DELAPORTE: He's a pretty smart, wise
4 man.

5 HEARING OFFICER BROOKOVER: I understand.
6 Again, the reverse page of that which would be 323, at
7 the next break Charging Party's counsel will make a
8 copy of that.

9 MS. SWEM: The last set of page numbers are
10 901 to 915.

11 HEARING OFFICER BROOKOVER: So the record
12 should show that the excluded documents have been
13 removed from the exhibit notebooks that have been
14 given to the school Board, and during the course of
15 the exhibits the school Board did, pursuant to my
16 instruction, refrain from examining exhibits as far as
17 I was able to tell, and the excluded exhibits are now
18 being given back to Charging Party's counsel, for the
19 record. Ms. Swem, proceed.

20 MS. SWEM: Thank you. To note for the
21 record, during the next break those documents that
22 were two-sided and not excluded, we will make
23 additional copies of the non-excluded side for the
24 Board notebook as you suggested.

25 So, with the rulings on the evidence, the

1 evidentiary matters and the documents, it's noted that
2 under Loudermill there is no requirement to call
3 witnesses. And so, it is our intent not to call
4 witnesses but to submit our case through the
5 documents.

6 And at this time I would like to ask the
7 Board members to refer Exhibit A, and I would make
8 comments about the significance of those documents.
9 Exhibit A is Dr. Metcalf's contract of employment.

10 HEARING OFFICER BROOKOVER: Let me interrupt
11 you, Ms. Swem. So, counsel for the Charging Party is
12 now going to comment on exhibits. I want to caution
13 you that her statements are statements that she
14 submits in the record in support of the charges
15 brought against Dr. Metcalf. I also want to caution
16 you that Dr. Metcalf's counsel will have the
17 opportunity to comment also on those exhibits during
18 his presentation so that -- and he has the opportunity
19 to have his side of the story heard, Dr. Metcalf does,
20 under the Loudermill decision, which is a Federal
21 Court decision.

22 So, I just want to caution you that you
23 should reserve any judgment, at least in terms of this
24 hearing, until you have heard all of the arguments
25 both against Dr. Metcalf and in support of

1 Dr. Metcalf, some of which you've obviously already
2 heard in the give and take between the attorneys and
3 the hearing officer. Proceed, Ms. Swem.

4 MS. SWEM: Thank you, Mr. Brookover.

5 Exhibit A is Dr. Metcalf's contract. The
6 specific point of reference is indeed paragraph seven
7 which establishes the just cause standard to terminate
8 the administrator's employment for the listed actions
9 or for material breach or for any other just cause.
10 That is the foundation on which the charges were
11 drafted.

12 Exhibit B is the Board's governance policy
13 E100. The second to the bottom, or I should say from
14 the bottom up, number two bullet, "Provide a safe,
15 respectful, and nurturing learning environment which
16 supports a secure, comfortable, and welcoming place
17 for all District students, parents, employees, and
18 visitors" was referenced in the charges and for your
19 consideration as to whether Dr. Metcalf's actions
20 encroached on that governance policy.

21 Item C, which is the same exhibit offered by
22 Dr. Metcalf.

23 HEARING OFFICER BROOKOVER: Exhibit C, for
24 the record.

25 MS. SWEM: Thank you. Is the Face, the

1 complete Facebook statements on May 30th, not only by
2 Dr. Metcalf but by others who were involved in that
3 string. I'd ask you to look at that carefully, to
4 consider the words, to consider context, both context
5 of the entire Facebook exchange and the context of
6 Dr. Metcalf's role as the District's superintendent
7 and the context of the timing of his statement
8 relative to what else was going on in our nation, our
9 region and, indeed, locally.

10 Exhibit D is a statement on Grand Ledge
11 Public Schools letterhead. Mr. Delaporte has
12 indicated he is going to call John Ellsworth as a
13 witness, and at this point I would reserve, out of
14 efficiency considerations, Mr. Ellsworth's testimony
15 related to this document as stated by Mr. Delaporte's
16 objection to this document.

17 This is a document that was sent out to
18 parents of the School District and Grand Ledge High
19 School students. The document speaks for itself. As
20 you know, as leaders of the District and Board
21 members, this document created additional outrage and
22 consternation regarding whether the superintendent
23 indeed understood the consequences of his actions with
24 the Facebook post --

25 MR. DELAPORTE: Your Honor, I'm going,

1 Mr. Hearing Officer, I'm going to object to the
2 characterization and to the use of this document. It
3 is not up to Dr. Metcalf to show that this was not his
4 document. It wasn't. All right. It wasn't even sent
5 out by Dr. Metcalf. Had they done even a basic
6 inquiry into this, they would have seen that it would
7 have went out from John Ellsworth. But the bottom
8 line is, it is not Dr. Metcalf's duty to authenticate
9 this document, it is the Charging Party's duty. And
10 if they are choosing to wait on who I call to the
11 stand, they may be waiting a long time.

12 Before using this document, they need to
13 actually authenticate, while using it against
14 Dr. Metcalf, they need to authenticate this document.
15 They need to show that this was Dr. Metcalf's idea,
16 that it was his words, et cetera, in order to use it
17 against him, and they have not done so.

18 HEARING OFFICER BROOKOVER: I think your
19 objection was previously on the record and the
20 document is admitted. So I understand your objection
21 but, further, counsel, it occurs to me that in your
22 case you can speak very adequately and eloquently as
23 to the representations that may be being made with
24 regard to this document, and I assume, based on what
25 you've said so far this morning, you will be able to

1 rebut those representations which I assume may
2 actually assist your client. So, I understand your
3 objection, however, Ms. Swem, you can proceed.

4 MR. DELAPORTE: If I may, I'm not a hundred
5 percent sure you do, or perhaps my objection has been
6 wrapped up in this morning's objection. I want to be
7 very clear what I'm objecting to.

8 I am objecting to placing the burden of
9 disproving authentication on Dr. Metcalf. That is a
10 violation of his due process rights. He does not have
11 to prove that something is not true. The burden of
12 proof lies with the Charging Party, not with the
13 Respondent, and if they are allowed to use this
14 document without authenticating it, then the burden is
15 being shifted to my client, and that is a
16 constitutional violation.

17 HEARING OFFICER BROOKOVER: Counsel, your
18 objection is made for the record. Proceed.

19 MS. SWEM: Thank you. We'll short-circuit
20 this and we will call John Ellsworth to address this
21 document.

22 HEARING OFFICER BROOKOVER: Mr. Ellsworth,
23 step up. The court reporter will swear you in.

24 COURT REPORTER: Raise your right hand
25 please. Do you swear or affirm that the testimony you

1 are about to give will be the truth, the whole truth
2 and nothing but the truth?

3 MR. ELLSWORTH: I do.

4 JOHN ELLSWORTH,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SWEM:

8 Q. Have a seat there, and if you would direct your
9 yourself to the blue notebook and it is tab D. And
10 since you are speaking and socially distanced you may
11 remove your mask. You have the exhibit in front of
12 you?

13 A. I do.

14 Q. Please state your name?

15 A. My name is John Ellsworth.

16 Q. What is your connection to the Grand Ledge Public
17 Schools?

18 A. I am currently the director of communications.

19 Q. What is a brief overview of your responsibilities in
20 that capacity?

21 A. I facilitate and help others in the District
22 communicate. I help maintain our website and social
23 media presence and I work with our newsletter team.

24 Q. Please refer to Exhibit D. Are you familiar with
25 Exhibit D?

1 A. Yes.

2 Q. What is your familiarity?

3 A. I helped Dr. Metcalf make this statement.

4 Q. You heard counsel for Dr. Metcalf this morning state
5 that Dr. Metcalf did not write this document? Did you
6 hear that?

7 A. I did.

8 Q. What is your reaction to that statement?

9 A. I disagree with that.

10 Q. Tell the Board why you disagree with that?

11 A. I was --

12 MR. DELAPORTE: All right. I'm going to
13 object here because that was not actually my
14 statement. My statement was that Dr. Metcalf did not
15 alone, did not solely write that. My statement was
16 that Dr. Metcalf had a hand in writing that, but did
17 not publish it, did not send it out. It was sent out
18 under Mr. Ellsworth's e-mail, that Mr. Ellsworth was
19 actively involved in it and actually recommended that
20 he publish the statement. That's a little bit
21 different than saying, no, he didn't have any hand in
22 writing it. I didn't say that.

23 HEARING OFFICER BROOKOVER: Counsel, are you
24 objecting to the question?

25 MR. DELAPORTE: I am.

1 HEARING OFFICER BROOKOVER: I'll allow the
2 question and it is obviously subject to
3 cross-examination.

4 Q. (BY MS. SWEM) Mr. Ellsworth, describe to the Board
5 your involvement in creating Exhibit D?

6 A. On the night of the social media post, Dr. Metcalf and
7 I began discussing whether to make a statement, what
8 that might be composed of, and agreed to finalize our
9 thoughts the morning of the 1st. On that morning he
10 sent me a draft that was notably different than what
11 we had been talking about, and I then used that as a
12 basis to work with him on what resulted in this
13 statement.

14 Q. Tell the Board, looking at Exhibit D, what
15 Dr. Metcalf's involvement was in creating this
16 statement?

17 A. The title was from what Dr. Metcalf sent me Monday
18 morning.

19 Q. That's the title, Local Leader says, Stop!! End the
20 Violence!! It's your testimony that came from
21 Dr. Metcalf?

22 A. Yes.

23 Q. Please continue.

24 A. The second paragraph was substantively, if not
25 entirely, what was sent to me Monday morning.

1 Q. Sent to you from Dr. Metcalf?
2 A. Yes.
3 Q. Please continue.
4 A. The third paragraph, I believe the third paragraph is
5 as well. The first paragraph was some of the drafting
6 we had been working on the night before integrated
7 into the whole statement.
8 Q. So, would you characterize the first paragraph as a
9 joint effort between you and Dr. Metcalf?
10 A. Yes.
11 MR. DELAPORTE: Objection, leading. Holy
12 cow!
13 HEARING OFFICER BROOKOVER: I'll allow.
14 MR. DELAPORTE: So she can sit here and tell
15 him what to say and that's okay. This is fair.
16 HEARING OFFICER BROOKOVER: Your objection is
17 overruled for the record.
18 MR. DELAPORTE: Yeah, didn't see that coming.
19 HEARING OFFICER BROOKOVER: What?
20 MR. DELAPORTE: I said I did not see that
21 coming.
22 HEARING OFFICER BROOKOVER: Thank you.
23 MR. DELAPORTE: This whole thing is becoming
24 a farce. She's, she's word for word telling him what
25 to say. Nothing she's done in this entire interview

1 of this witness has not been leading in one way or the
2 other, yet somehow that's fair to my client while
3 she's busy putting words into his mouth.

4 HEARING OFFICER BROOKOVER: Your objection is
5 on the record and it's ruled on. Proceed.

6 Q. (BY MS. SWEM) After the creation of the document you
7 see in Exhibit D, what happened next with the
8 document.

9 A. I was instructed to disseminate the document in ways I
10 normally do, which was through our school messenger
11 system, the mass e-mail system, and then we also
12 discussed how we were going to post it on Facebook,
13 our social media account space.

14 Q. Who provided you that instruction?

15 A. Dr. Metcalf.

16 MS. SWEM: Nothing further.

17 HEARING OFFICER BROOKOVER:
18 Cross-examination, counsel?

19 **CROSS-EXAMINATION**

20 **BY MR. DELAPORTE:**

21 Q. Mr. Ellsworth, you were part of the original Facebook
22 post, weren't you?

23 A. Yes.

24 Q. And in fact, in your writings you used the N word,
25 didn't you? I can read it to you if you want.

1 MS. SWEM: I request that if a statement is
2 being addressed to the witness that the document be
3 identified so the witness can review it.

4 MR. DELAPORTE: I'm asking him a question.
5 I'm asking him whether he used the N word during the
6 exchange the night before this alleged document was
7 created.

8 HEARING OFFICER BROOKOVER: I'll allow the
9 question.

10 THE WITNESS: On the Facebook post?

11 Q. (BY MR. DELAPORTE) Yes.

12 A. I do not believe I did.

13 Q. Okay. I'm going to direct you, hold on, I want to get
14 the right document here.

15 HEARING OFFICER BROOKOVER: Looking at your
16 exhibits now, counsel?

17 MR. DELAPORTE: No, still looking at the
18 Charging Party's exhibits. It's Exhibit C.

19 Q. (BY MR. DELAPORTE) I'm going to direct you to page
20 two, the paragraph at the bottom that is John Mark
21 Ellsworth.

22 A. Yes.

23 Q. Can you read through it for me please?

24 A. Brett, the officer was arrested --

25 Q. No, I'm sorry, I meant to yourself.

1 HEARING OFFICER BROOKOVER: Read it to
2 yourself, and he will ask you a question based on it.
3 THE WITNESS: I've read it now.
4 Q. (BY MR. DELAPORTE) Do you see the N word in there?
5 A. Not as it is commonly used as the N word, no.
6 Q. This particular word ends in an O?
7 A. That's not -- okay.
8 Q. Is there a word in there that starts with N, ends in O
9 and refers, is a term that is no longer considered
10 appropriate when referencing a black or African
11 American person?
12 A. I see it as part of a quote.
13 Q. Is that a yes?
14 A. Please repeat the question.
15 Q. In your statement did you type a word that starts with
16 N, ends in O and is no longer considered appropriate
17 when referring to a black or African American person?
18 A. I typed it as part of a quote.
19 Q. Is that a yes or a no?
20 A. Yes.
21 Q. Okay. Were you disciplined for that?
22 A. No.
23 Q. Do you know the, having been in education -- how long
24 have you been in education?
25 A. Twenty years a classroom teacher, two years as

1 communications director.

2 Q. Okay. Do you understand the concept of disparate
3 treatment?

4 A. I think I have some layman's knowledge of that.

5 Q. And that's when one person does something that's
6 similar to the other person but they are treated
7 differently, correct?

8 A. That's my layman's understanding.

9 Q. Okay. So you were not disciplined for using the word
10 that begins with N and ends in O?

11 MS. SWEM: Objection, relevance.

12 HEARING OFFICER BROOKOVER: I'll allow it.

13 THE WITNESS: I was not disciplined.

14 Q. (BY MR. DELAPORTE) When Dr. Metcalf removed his
15 Facebook page, you reposted his statements as a
16 snapshot, correct?

17 A. I shared a PDF of the post before, I think your phrase
18 was, he shut the page down.

19 Q. And was that beneficial to the District?

20 A. I'm not -- I -- I think so.

21 Q. You think that reposting something that you claim --
22 I'm sorry, let me take a step back then. Perhaps I'm
23 wrong.

24 Were you offended when Dr. Metcalf said that
25 people ought to live a lawful life?

1 A. No.

2 Q. Did you think that Dr. Metcalf exercising his First
3 Amendment rights in the middle, it was pretty late,
4 right, like two in the morning or something, 11:30,
5 something like that?

6 A. I do not know. I don't recall when he posted, what
7 time of day it was.

8 Q. Well, it's not important. You weren't offended,
9 though, when he exercised his First Amendment rights,
10 though, were you?

11 A. I was.

12 Q. You were offended that somebody was exercising their
13 First Amendment rights?

14 A. I guess when you say exercising First Amendment
15 rights, I don't object to First Amendment rights and
16 people speaking.

17 Q. You weren't, just now you said you weren't offended
18 when he said that people ought to live a lawful life,
19 you weren't offended by him exercising his First
20 Amendment rights. You didn't think that what he was
21 doing was harming the District, did you?

22 A. Yes, I did think it was.

23 Q. Then why did you repost the statement? If the
24 statement was harmful to the District and your job is
25 as communications director, I assume, to protect the

1 District, am I correct?

2 A. I'm not sure that's a fair characterization of what I
3 do.

4 Q. So, in your job as communications director, you are
5 not, one of your goals isn't to protect the District?

6 A. Part of my role is to provide accurate information to
7 the public.

8 Q. So, were you acting in your District role when you
9 reposted that?

10 A. No, I was not.

11 Q. Then why did you repost it if you were offended by it,
12 why repost it?

13 A. I also as an individual think it is important to have
14 accurate information available.

15 Q. Don't you understand that other people glommed on to
16 your reposting?

17 A. Can you repeat please repeat the question?

18 Q. Yes. You understand that other people on social media
19 caught onto and keyed on your reposting of the
20 conversation?

21 A. I do not understand that.

22 Q. You're the social media director, aren't you?

23 A. Yes, I run our social media.

24 Q. So, when you reposted it you had an understanding that
25 that document being reposted would then go out to

1 others on Facebook, correct?

2 A. Yes.

3 Q. So, Dr. Metcalf, he exercised his First Amendment
4 rights --

5 HEARING OFFICER BROOKOVER: Excuse me,
6 counsel. I'm sorry to interrupt, but I have to kill a
7 bee.

8 MR. DELAPORTE: I understand. Please feel
9 free.

10 HEARING OFFICER BROOKOVER: I'm allergic to
11 them, and I have a former friend who played football
12 with me in East Lansing who just had a heart attack
13 after being attacked by bees. I had no other option,
14 counsel. Proceed.

15 MR. DELAPORTE: Nothing we're doing here
16 should endanger your life.

17 HEARING OFFICER BROOKOVER: If a second bee
18 arrives at my spot, I will interrupt you again.

19 Q. (BY MR. DELAPORTE) So, Dr. Metcalf exercises his
20 First Amendment rights. Along comes a community
21 member or two in conjunction who attack Dr. Metcalf,
22 correct? You can read through.

23 A. There were community members that posted on that
24 thread.

25 Q. There were two in particular that attacked

1 Dr. Metcalf, correct?

2 A. I don't understand attacked.

3 Q. Are we going to argue about the meaning --

4 HEARING OFFICER BROOKOVER: Let's just ask

5 the question please.

6 Q. (BY MR. DELAPORTE) Were there two community members

7 in particular that attacked Dr. Metcalf?

8 A. Yes.

9 Q. Were you aware that one of them, Dr. Metcalf had

10 turned that person over to the police for embezzling

11 from the Parent Teacher Organization?

12 MS. SWEM: Objection, relevance.

13 HEARING OFFICER BROOKOVER: I'll allow it.

14 THE WITNESS: Yes.

15 Q. (BY MR. DELAPORTE) Yet knowing that, knowing that his

16 comments could be taken out of context and hurt the

17 District, would you agree -- I'll break it down.

18 Would you agree that if his comments were

19 taken out of context that they could hurt the

20 District?

21 A. Will you repeat it again?

22 Q. If Dr. Metcalf's comments were taken out of context,

23 you've said that you weren't offended by his call to

24 live a lawful life. You agree with that, correct?

25 A. Correct.

1 Q. But if these were taken out of context, and I think
2 you even make reference within here that they could be
3 taken out of context, if they were taken out of
4 context, they could hurt the District, correct, that
5 was your feeling?

6 A. Yes.

7 MS. SWEM: Objection, that mischaracterizes a
8 prior statement.

9 MR. DELAPORTE: He just said yes.

10 HEARING OFFICER BROOKOVER: Excuse me,
11 counsel, I will allow the question, and the answer I
12 think is on the record. So let's move on now please.

13 Q. (BY MR. DELAPORTE) So if you knew this and you are
14 the District's communications director, why did you
15 repost his comments.

16 A. I think a full, accurate record is good for
17 transparency and for government.

18 Q. Even if it hurts the District?

19 MS. SWEM: Objection, argumentative.

20 HEARING OFFICER BROOKOVER: I'll allow the
21 question.

22 THE WITNESS: Could you please repeat it?

23 Q. (BY MR. DELAPORTE) You believe that it should have
24 been published even if it hurt the District, correct?

25 A. Yes.

1 Q. In damaging the District, have you been disciplined?
2 A. I don't believe I've damaged the District.
3 Q. Let me rephrase it then. Earlier you indicated that
4 his statements could have been taken out of context,
5 could damage the District. We had that conversation,
6 remember?
7 A. Yes.
8 Q. And you said yes. Okay. Then you said, you know, you
9 stated your reason for reposting, and my question was
10 even if it damaged the District, and you said yes,
11 correct?
12 A. Correct.
13 Q. So my question is having reposted it, knowing that it
14 could damage the District, have you been disciplined
15 at all by the District or the Board of Education?
16 A. I have not been disciplined by the Board of Education.
17 I have not been disciplined by administration.
18 Q. You were the first one to raise the issue of putting
19 out a statement, correct?
20 A. I don't know if I was the first one. I raised the
21 issue with Dr. Metcalf.
22 Q. So you don't know if you were the first or not the
23 first, you have no clue?
24 A. I do not know who all Dr. Metcalf spoke to that night
25 or that morning.

1 Q. Okay. Fair enough. Between you and Dr. Metcalf, you
2 were the first one to raise the issue?

3 A. Yes.

4 Q. And I think you may have made a slight -- I want to
5 make sure that you have a chance to answer this
6 question. The base document, you were the one that
7 sent that, correct?

8 A. I disseminate information, yes.

9 Q. I'm not talking about disseminating it out there.
10 You're the one who created the initial base document,
11 correct?

12 A. Sunday night he and I were working together and I sent
13 the base document which is what you're referring to.

14 HEARING OFFICER BROOKOVER: Counsel, just for
15 the record, so I keep my head straight, we're still
16 referring to Exhibit D as the "document" you're
17 referring to?

18 MR. DELAPORTE: Yes, sir.

19 HEARING OFFICER BROOKOVER: Thank you.

20 Q. (BY MR. DELAPORTE) And Dr. Metcalf did have some
21 input, correct?

22 A. Significant.

23 Q. However, the vast majority of this is based on your
24 document, correct?

25 A. No.

1 Q. Whose document is it based on?
2 A. The document that Dr. Metcalf sent me Monday morning.
3 Q. And that was a Google doc that you created, correct?
4 A. No.

5 MR. DELAPORTE: Mr. Brookover, I would like
6 on the record to make an objection. Months and months
7 ago Dr. Metcalf requested via FOIA the metadata
8 attached to Exhibit D that would have proven that, in
9 fact, this, this witness is lying on the stand. That
10 metadata has been denied Dr. Metcalf. It is key to
11 his defense that Mr. Ellsworth was, in fact, the
12 person who created the Google document. That
13 information would be contained in the metadata. We
14 have been refused the metadata. I would like, I would
15 like you to, in light of the denial of the metadata, I
16 would like a ruling that, in fact, this witness was
17 the first one to have initiated that document, and I
18 base that on the concept that a denial of a witness or
19 a hiding of evidence, those types of actions,
20 especially electronic records, allow the damaged party
21 to have an inference on the record that were that
22 information available it would say, it would have
23 supported what the point that the party is trying to
24 make, the non-breaching party is trying to make. We
25 have requested that information not only through FOIA

1 but also in an e-mail to Ms. Swem, and every single
2 time that was denied. It is key information. It
3 would have proven without a doubt that Mr. Ellsworth
4 was the one who created the Google document. Given
5 the denial of basic information necessary for
6 Mr. Metcalf to defend himself, we want an inference
7 that Mr. Ellsworth did initiate and create that Google
8 document.

9 HEARING OFFICER BROOKOVER: Well, I'm not
10 entirely sure what you're asking for, but the reality
11 is you've made an objection to the witness's
12 testimony. In your objection you've called the
13 witness a liar. You've indicated that apparently
14 there is some other information available which I
15 don't know about.

16 My understanding is that you have separately
17 filed a Freedom of Information Act lawsuit in the
18 Eaton County Circuit Court, which I presume this
19 document is subject to that lawsuit, and so I guess
20 I'm denying -- I acknowledge your objection for the
21 record. I am not making any ruling as to the
22 witness's testimony one way or the other. You called
23 him a liar on the record, and it occurs to me that
24 there is another person in this room who you are able
25 to call who can testify as to the genesis or

1 generation of this document, if you so desire. So, do
2 you have any other cross-examination? I understand
3 your objection. It's on the record, and to the extent
4 it asks me to take some action, I deny that request.
5 Anything else for this witness at this point in time?

6 MR. DELAPORTE: Yes.

7 Q. (BY MR. DELAPORTE) To confirm, Dr. Metcalf is not the
8 only one --

9 HEARING OFFICER BROOKOVER: I didn't hear you
10 on that one, I'm sorry.

11 Q. (BY MR. DELAPORTE) To confirm, Dr. Metcalf was not
12 the only one who authored this document, correct?

13 A. He and I worked together on that.

14 Q. Is that a yes?

15 A. It was his statement.

16 Q. It's not what you just said a second ago. You said
17 you worked together.

18 HEARING OFFICER BROOKOVER: Do you have a
19 question for the witness rather than argue with him,
20 please?

21 Q. (BY MR. DELAPORTE) Yes or no, was this document the
22 sole authorship of Dr. Metcalf?

23 A. No.

24 Q. You were also an author, correct?

25 A. Yes.

1 Q. You were the one who suggested this to Dr. Metcalf,
2 correct?
3 A. Yes.
4 Q. And you are the one who sent the initial document that
5 you both worked on?
6 A. I sent drafts Sunday night.
7 Q. So yes?
8 A. Yes.
9 Q. And after Dr. Metcalf had removed his Facebook page
10 trying to kill any controversy, you reposted the
11 conversation, correct?
12 A. Yes.
13 Q. You are an employee of this District?
14 A. Yes.
15 Q. You are the director of communications for this
16 District?
17 A. Yes.
18 Q. When you indicated that the second paragraph was
19 primarily Dr. Metcalf's, it was not only
20 Dr. Metcalf's, correct?
21 A. Correct.
22 Q. As well as the first and third paragraph, correct?
23 A. Correct.
24 MR. DELAPORTE: Nothing further.
25 HEARING OFFICER BROOKOVER: Anything more,

1 Ms. Swem?

2 MS. SWEM: Just a brief redirect.

3 **REDIRECT EXAMINATION**

4 **BY MS. SWEM:**

5 Q. Returning to Exhibit C, page two, the paragraph
6 attributed to you. You are quoting and you refer to
7 MLK's "language of the unheard" statement. In your
8 reference, who is MLK?

9 A. Martin Luther King, Junior.

10 Q. The quoted language that uses the word "Negro", who
11 did you quote in that context?

12 A. Martin Luther King, Junior.

13 Q. Do you know the approximate date of Dr. King's
14 statement?

15 A. I'm going to guess the late '50s or early '60s.

16 MR. DELAPORTE: Objection.

17 HEARING OFFICER BROOKOVER: I'll allow it.
18 Can we move on?

19 MS. SWEM: Thank you.

20 HEARING OFFICER BROOKOVER: The document
21 includes a quote from Dr. Martin Luther King that uses
22 the word "Negro". Now we all know that. Can we move
23 on please?

24 Q. (BY MS. SWEM) Mr. Ellsworth, what was your reaction
25 to Dr. Metcalf's comment on the Facebook post?

1 A. I did not like it.

2 MS. SWEM: Thank you. Nothing further.

3 HEARING OFFICER BROOKOVER: Are we done with
4 this witness?

5 MS. SWEM: I am excusing the witness subject
6 to --

7 HEARING OFFICER BROOKOVER: Mr. Delaporte.

8 MR. DELAPORTE: I have two quick questions.

9 HEARING OFFICER BROOKOVER: I'm sorry, two
10 quick questions?

11 MR. DELAPORTE: Yes.

12 HEARING OFFICER BROOKOVER: I was always
13 taught when an attorney says something like that, and
14 I'm sure you were taught the same thing and Ms. Swem
15 was taught the same thing too, so let me just caution
16 you whenever an attorney says two quick questions or a
17 short question, that may not mean what it represents
18 to mean, but I'm trusting Mr. Delaporte that he wants
19 to move on here in the interest of defending his
20 client. So proceed, Mr. Delaporte.

21 **RE-CROSS-EXAMINATION**

22 **BY MR. DELAPORTE:**

23 Q. You didn't have to use a quote that included the N
24 word, correct?

25 A. Correct.

1 HEARING OFFICER BROOKOVER: By N word we're
2 now talking about?
3 MR. DELAPORTE: The work that ends in O.
4 HEARING OFFICER BROOKOVER: We're talking
5 about the word "Negro", correct?
6 MR. DELAPORTE: Correct.
7 THE WITNESS: Correct.
8 Q. (BY MR. DELAPORTE) A second ago you said in response
9 to Ms. Swem's question that you were not happy with
10 his statement? Am I getting it wrong, I'm sorry?
11 A. I believe she asked me if I liked or I said I did not
12 like the statement.
13 Q. Okay. But earlier you did not have a problem with his
14 call for living a lawful life, correct?
15 A. Correct.
16 MR. DELAPORTE: Nothing further.
17 HEARING OFFICER BROOKOVER: Nice job,
18 Mr. Delaporte, it was three, and here comes another
19 bee so if I stop everything, please forgive me.
20 MS. SWEM: Can we excuse the witness?
21 HEARING OFFICER BROOKOVER: You're excused,
22 sir. Thank you.
23 I want to just interject here. I know these
24 two attorneys are much more brilliant than I am and
25 experienced, but I am perfectly willing to go straight

1 through if everybody wants to go straight through, or
2 if you want to take some sort of a break. I don't
3 want to take a break yet, but I want to try to sort
4 that out here in a few minutes. So, Ms. Swem, what's
5 next for you?

6 MS. SWEM: I will continue, and as you see
7 fit with the break works for us.

8 HEARING OFFICER BROOKOVER: Mr. Delaporte?

9 MR. DELAPORTE: That's fine with me.

10 HEARING OFFICER BROOKOVER: Do you trust me
11 enough to at least decide when we take a lunch break?

12 MR. DELAPORTE: Yes, sir.

13 HEARING OFFICER BROOKOVER: Thank you. I
14 appreciate that modicum of trust. Ms. Swem.

15 MS. SWEM: Thank you. Next is Exhibit E
16 which is two pages in our submission. The first page
17 is an e-mail from Brian Metcalf to Board members sent
18 at 10:59 a.m. stating "This is the statement that will
19 go out at 10", and attached to that is the apology
20 statement. We note also that this is Exhibit D, not
21 the e-mail but the actual statement, and it's been
22 admitted. And so this is to help complete the record
23 regarding the communications regarding the Facebook
24 statement.

25 Next is Exhibit F. This is Dr. Metcalf's

1 e-mail to the Board June 5th at 8:43 a.m., as you see
2 from the cover e-mail, and it's followed by three full
3 pages of Dr. Metcalf addressing this matter to the
4 Board. This document speaks for itself.

5 MR. DELAPORTE: I think you sent your bee
6 over to me. You should be safe now.

7 HEARING OFFICER BROOKOVER: Mr. Delaporte,
8 that doesn't mean I don't love you. The bee has
9 decided on whom it is going to alight today, and if
10 you need a break to kill the bee, please let me know.

11 MS. SWEM: Continuing, Exhibit G which was
12 admitted. This document speaks for itself. It is
13 from various elected officials voicing their concern
14 about Dr. Metcalf's comments.

15 MR. DELAPORTE: Objection. I want to object
16 to that characterization. I think that it was clear
17 that it was admitted as having been received, but
18 there was no, you know, no authentication of
19 authorship.

20 HEARING OFFICER BROOKOVER: Your objection is
21 on the record, and you can comment on it with regard
22 to your case.

23 MS. SWEM: Next is Exhibit I, which reflects
24 the e-mail sent from Melissa Mazzola, who is the vice
25 president of the Grand Ledge Education Association.

1 This one in the exhibit book reflects that was sent
2 specifically to the Board president. It was likewise
3 sent to other Board members, and reflects the
4 statement from the Grand Ledge Education Association.
5 And it is a vote of no confidence.

6 I note again Mr. Delaporte has listed
7 Ms. Mazzola as a witness. If it would be more
8 efficient and expedient, I can call Ms. Mazzola to
9 address this at this point.

10 HEARING OFFICER BROOKOVER: Let me make it
11 clear for the Board, because somebody is listed as a
12 witness doesn't mean they have any obligation to
13 utilize the witness. Ms. Swem, with all due respect
14 to you, I think you have to make your own decision as
15 to whether you want to call witnesses or not.
16 Mr. Delaporte is under no obligation to call any
17 witness, including his client.

18 MS. SWEM: I understand.

19 HEARING OFFICER BROOKOVER: I appreciate your
20 offer, but I think you have to make that decision.

21 MS. SWEM: I'll move on to Exhibit J which
22 was denied.

23 HEARING OFFICER BROOKOVER: It was denied.

24 MS. SWEM: Yup. So Exhibit K which is the
25 document that came through the portal to the school

1 Board from the Michigan State University, some of the
2 College of Education Department of Educational
3 Administration.

4 M was denied. And that takes us to N, the
5 community e-mails with the exceptions noted on the
6 record that certain pages were to be excluded.

7 HEARING OFFICER BROOKOVER: Let me just
8 clarify for the record, I think you skipped over L
9 which is the minutes.

10 MS. SWEM: Yes, I did. Thank you.

11 HEARING OFFICER BROOKOVER: Those were
12 admitted over objection. It is Mr. Delaporte's
13 position that those minutes are incomplete. I am not
14 trying to put words in your mouth, Mr. Delaporte, but
15 that was my understanding they are incomplete and,
16 Ms. Swem, they are admitted. I want to make that
17 clear.

18 MS. SWEM: Thank you. So to Exhibit L, which
19 reflect the special meeting minutes, I note for the
20 record that these minutes are also available on the
21 Board's website as it is the complete recording of
22 this Board meeting --

23 MR. DELAPORTE: Objection. Ms. Swem is
24 testifying. She's not in a position to testify unless
25 she happens to be the Board's secretary.

1 HEARING OFFICER BROOKOVER: It's overruled
2 because I think we all know the Board minutes
3 recording is available.

4 MS. SWEM: Thank you.

5 MR. DELAPORTE: Yes, but the recording in
6 this particular case was cut off. The public was
7 excluded halfway through the public comments.

8 HEARING OFFICER BROOKOVER: I think that's
9 reflected in the minutes, isn't it, counsel?

10 MR. DELAPORTE: What is not reflected in the
11 minutes and is reflected in the e-mails of the various
12 Board members is the vote to fire. The fact that they
13 went into closed session on a vote that was, frankly,
14 a violation of the Open Meetings Act, that the closed
15 session was a violation of the Open Meetings Act, and
16 then they came out and somewhere in there it appears
17 from the e-mails that it was during the closed session
18 there was a unanimous vote to fire my client. None of
19 that is reflected in here, and it can't be
20 authenticated by the recordings because they cut the
21 recordings.

22 HEARING OFFICER BROOKOVER: The minutes are
23 admitted as previously ruled. Your arguments about
24 what did or didn't happen to your client in terms of
25 discipline prior to this hearing are readily available

1 for you to make in your case in chief. Proceed.

2 MS. SWEM: Thank you. Of course, each one of
3 the Board members who are present today were present
4 at that meeting as reflected by these minutes and can
5 certainly call on your experience in that situation to
6 reflect on the actions of that evening.

7 Now I move to N. The community e-mails have
8 been admitted with the exception of pages previously
9 noted on record.

10 These documents reflect business records
11 coming into the District responding to Dr. Metcalf's
12 statements and expressing various opinions of
13 stakeholders.

14 Finally, Exhibit O, which we will add after
15 the break, is the affidavit of Chris Wigent.

16 That concludes our presentation of the
17 exhibits in support of the charges as outlined in the
18 charges and argued, excuse me, not argued, as provided
19 as overview in the opening statement. We rest. Thank
20 you.

21 HEARING OFFICER BROOKOVER: So that concludes
22 your case in chief in support of the charges that were
23 made against Dr. Metcalf, is that correct?

24 MS. SWEM: That is correct.

25 HEARING OFFICER BROOKOVER: Unless I have an

1 objection, I think this would be a good time to take a
2 break. Dr. Chapin, I think he is coordinating some
3 kind of a lunch for people and it looks like it's
4 here. So can I suggest that we take a break until
5 12:30? Does that give everybody enough time to do
6 what they need to do? And then we'll reconvene at
7 12:30. Mr. Delaporte?

8 MR. DELAPORTE: Yes, sir.

9 HEARING OFFICER BROOKOVER: Thank you. We
10 are adjourned until 12:30 people.

11 (A lunch break was taken.)

12 HEARING OFFICER BROOKOVER: The Charging
13 Party has closed their proofs. Mr. Delaporte, want to
14 proceed please?

15 MR. DELAPORTE: Mr. Brookover, it is my
16 intent because on certain issues no one was there but
17 the Board member, I've got no choice but to call a
18 Board member as a witness. I just received the Board
19 counsel's diatribe, no offense intended, diatribe on
20 why I can't call Board members. I really need a
21 couple minutes to review this.

22 HEARING OFFICER BROOKOVER: Sure. Go ahead.
23 Let me know when you're done.

24 MS. STARLIN: Mr. Brookover, while we're
25 waiting, I do have those exhibits I can distribute to

1 the Board.

2 HEARING OFFICER BROOKOVER: Please do. Make
3 sure Mr. Delaporte has copies too and the court
4 reporter.

5 MR. DELAPORTE: Mr. Brookover, how would you
6 like us to do this? Would you like us to introduce
7 our exhibits first or proceed with our presentation?
8 It seems that we would introduce our exhibits first.

9 HEARING OFFICER BROOKOVER: It's totally up
10 to you, Mr. Delaporte, but if there's going to be a
11 question about witnesses, we might as well take that
12 up as an initial matter now, if you are able to.

13 MR. DELAPORTE: Well, I can. I've looked at
14 their brief that they produced. I'll note that this
15 is pretty consistent with this entire, entire carnival
16 that we're involved in here that we're getting briefs
17 and we don't have a chance obviously to post one of
18 our own and produce the law that would support,
19 support our position, but I think it may be a little
20 bit of a moot point because I think that their brief
21 does not capture the reasons that we are asking for
22 Board members to be called as witnesses.

23 There are certain fundamental activities that
24 form the basis of these charges where there are no
25 other witnesses available to put on the stand except

1 for the Board members themselves. They were active
2 participants in the underlying facts that allegedly
3 support Dr. Metcalf's dismissal. They are part of the
4 charges, and there just isn't anybody else.

5 For example, the statement that Dr. Metcalf
6 had to put out apologizing to the community was not
7 written by Dr. Metcalf. It was not created or in any
8 way condoned by Dr. Metcalf. It was dictated to him
9 by the Board of Education after the Board of Education
10 communicated via telephone, text messages, e-mails,
11 et cetera, in violation, by the way, of the Open
12 Meetings Act and came to a determination that this
13 statement would be the statement that Dr. Metcalf put
14 out.

15 Now, I can't counter Ms. Swem's case and I
16 can't defend my client without getting those facts in
17 from the Board members themselves. They were the only
18 ones on these communications, in these meetings, in
19 the decision to have him issue an apology, take
20 training and a letter in his file. I have no other
21 way to present that evidence without their testimony,
22 and that's just one example.

23 There are others. There are things that
24 occurred during the June 5th meeting after the minutes
25 are cut off and after the video, the community is, is,

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the public is excluded from the Zoom meeting. These people are the ones that were there. I have to question them.

HEARING OFFICER BROOKOVER: Can I, I don't want to interrupt you but let me see if I can rephrase or characterize my understanding of where you're at right now in terms of your request of the hearing officer. If I'm wrong, let me know.

So it's my understanding that you are in the posture of making a motion to the hearings officer to require the testimony of some school Board members. Is that a fair and accurate statement?

MR. DELAPORTE: I would say I'm responding to the Board's attorney's motion to exclude them I think would be more proper.

HEARING OFFICER BROOKOVER: My understanding was that you had indicated that you might want to call some of them.

MR. DELAPORTE: That is correct.

HEARING OFFICER BROOKOVER: Okay. So I assume her brief, which I just received too, is in response to that suggestion on your part. Can we agree on that?

MR. DELAPORTE: I don't know her mind, but I would assume so.

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HEARING OFFICER BROOKOVER: Okay. So, am I correct in characterizing your motion at this point that the hearing officer require that certain school Board members testify?

MR. DELAPORTE: Yes.

HEARING OFFICER BROOKOVER: I anticipated your motion, in part because you raised this, I believe, in our prehearing conference phone call, and so I also did some research over the weekend, and, of course, prior today on the record you and I had a little bit of a soliloquy on this issue or something that was a tangential issue. Unless you can give me a case, and I think you already suggested this morning you didn't have one, but I don't want to put words in your mouth, I can find no authority at this stage of what I will refer to as a Loudermill hearing that I have the authority to order anybody to testify. I don't have any subpoena power. I don't have any other authority. So, if that's your motion, and based on your motion and Ms. Swem's brief, then that motion is denied.

Now, I do, however, understand your point of view in terms of certain information being available to the school Board members, and I would say parenthetically it would appear it is also available

1 to your client, but maybe I'm misunderstanding that,
2 and you have no obligation to call him obviously under
3 the case law. So, if you want to ask certain school
4 Board members on the record if they will voluntarily
5 testify, I am fine with that. And if they are willing
6 to testify, then so be it. If they are not, I can't
7 order them. So, you understand my ruling?

8 MR. DELAPORTE: I do. I would say that there
9 is something that you do have the authority to do.
10 Under the authority granted to you to address
11 procedural issues, and that is that you can -- in
12 theory, you've been given the power to strike portions
13 then of the charges if they refuse to testify.

14 HEARING OFFICER BROOKOVER: Well, I think I
15 just made my ruling, but if that motion, if you want
16 to make that motion at the appropriate time, I will
17 have to consider that motion. So right now the motion
18 is denied. I leave it to you as to how you want to
19 proceed. I think your suggestion in terms of going
20 through the exhibits makes some sense, but it's
21 totally up to you. Ms. Swem.

22 MS. SWEM: Mr. Brookover, would you like us
23 to give a copy of the brief to the court reporter?

24 HEARING OFFICER BROOKOVER: It's fine if you
25 do. I have it.

1 MS. SWEM: You have it, Mr. Delaporte has it.
2 MR. DELAPORTE: For the sake of the news
3 media, those who have joined us here, I'm going to try
4 and make this as quick as possible and as short as
5 possible. With the exception of Exhibit P and Exhibit
6 X --
7 HEARING OFFICER BROOKOVER: And you're
8 referring to your list of exhibits?
9 MR. DELAPORTE: Yes. Exhibit P and Exhibit
10 X --
11 HEARING OFFICER BROOKOVER: I don't know what
12 the status of your exhibits is vis-a-vis the school
13 Board. Do they have a set?
14 MR. DELAPORTE: They have a set.
15 HEARING OFFICER BROOKOVER: Okay. Again, I
16 would caution you until we have discussion between
17 counsel and me regarding what's admissible and what's
18 not, unless Ms. Swem is willing to stipulate to all
19 these exhibits at this point in time, I would ask you
20 not to review the exhibits until we've had our
21 discussion. Proceed, counsel. Thank you.
22 MR. DELAPORTE: With the exception of Exhibit
23 P and Exhibit X --
24 HEARING OFFICER BROOKOVER: Was the first one
25 E, I'm sorry?

1 MR. DELAPORTE: P.
2 HEARING OFFICER BROOKOVER: P?
3 MR. DELAPORTE: P as in papa.
4 HEARING OFFICER BROOKOVER: I just wanted to
5 make sure you weren't saying B as in bee.
6 MR. DELAPORTE: Not B as in bravo.
7 HEARING OFFICER BROOKOVER: And the second
8 one?
9 MR. DELAPORTE: X as in x-ray.
10 HEARING OFFICER BROOKOVER: Okay. Thank you.
11 MR. DELAPORTE: With the exception of those
12 two, everything in our exhibit book was received via
13 FOIA from the District. These are District records.
14 They were responsive to a FOIA request. They fall
15 within the business exception, and we would move for
16 their admission.
17 HEARING OFFICER BROOKOVER: Okay. Thank you,
18 sir. Ms. Swem?
19 MS. SWEM: That's not completely accurate.
20 There are some of the documents submitted as exhibits
21 by Mr. Delaporte that have extraneous comments on
22 them. There are a number of them which we would
23 stipulate to, and I think for the cleanest record, if
24 we could just go through them quickly we can
25 acknowledge whether we have an objection or not and

1 the basis for it.

2 HEARING OFFICER BROOKOVER: Well, let's do it
3 this way. Exhibit A, is that stipulated to?

4 MS. SWEM: Yes.

5 HEARING OFFICER BROOKOVER: Exhibit B, is
6 that stipulated to?

7 MS. SWEM: Yes.

8 HEARING OFFICER BROOKOVER: Exhibit C, is
9 that stipulated to?

10 MS. SWEM: Yes.

11 HEARING OFFICER BROOKOVER: Exhibit D, is
12 that stipulated to?

13 MS. SWEM: No. If you could look at the top
14 of Exhibit D, there is an extraneous remark at the
15 top.

16 MR. DELAPORTE: We would be willing to have
17 that struck, blacked out and submitted.

18 HEARING OFFICER BROOKOVER: So, again,
19 forgive me, counsel, because I'm not as close to this
20 as the two of you. I believe the remainder of this
21 has already been admitted, is that correct?

22 MS. SWEM: That's correct.

23 HEARING OFFICER BROOKOVER: Exhibit D will be
24 admitted with the top line stricken.

25 MS. SWEM: Thank you.

1 HEARING OFFICER BROOKOVER: And
2 Mr. Delaporte, somehow you're going to have to figure
3 out how to do that so we can do the exchange. Maybe
4 on a break take care of it.
5 Exhibit E, is that stipulated to?
6 MS. SWEM: Yes.
7 HEARING OFFICER BROOKOVER: Exhibit F, is
8 that stipulated to?
9 MS. SWEM: No.
10 HEARING OFFICER BROOKOVER: Your reasons?
11 MS. SWEM: The same reason. Here, we have a
12 document or a statement at the bottom attributable to
13 Mike Hoskins. We have no objection to the top third
14 of the, two-thirds of the document which addresses the
15 guidelines for public participation, but the statement
16 from Mike Hoskins we do object to.
17 HEARING OFFICER BROOKOVER: Mr. Delaporte.
18 MR. DELAPORTE: That was a statement sent to
19 the Board of Education, but we have no problems with
20 eliminating that and keeping the top two-thirds.
21 HEARING OFFICER BROOKOVER: All right. That
22 Hoskins statement will be admitted with the bottom
23 part stricken. That's Exhibit F.
24 Exhibit G?
25 MS. SWEM: I request some additional

1 information about this Exhibit G. They purport to be
2 statements attributed to different persons with a date
3 and a time, but there's no context and it appears to
4 be retyped, so I don't know the origin. I need to
5 know more.

6 HEARING OFFICER BROOKOVER: Counsel?

7 MR. DELAPORTE: These were the e-mails
8 between those two individuals, Ms. Clark Pierson and
9 Ms. Buffenbarger. This is an issue of the format in
10 which, the electronic format in which we were given
11 these records. We could not get those to copy
12 directly over, so we simply reproduced it right next,
13 you know, right there.

14 HEARING OFFICER BROOKOVER: So, let me see if
15 I can interpret. I don't want to put words in your
16 mouth. This segment you got from the FOIA response?

17 MR. DELAPORTE: Correct. It was electronic.
18 We attempted --

19 HEARING OFFICER BROOKOVER: I understand. I
20 understand. Okay. And you make that representation
21 being an officer of the court, correct?

22 MR. DELAPORTE: Yes, sir.

23 HEARING OFFICER BROOKOVER: They are
24 admitted.

25 Exhibit H? I assume the same situation

1 there?

2 MS. SWEM: Yes.

3 HEARING OFFICER BROOKOVER: You okay,
4 counsel? You need a minute? Let's take a five-minute
5 break.

6 MR. DELAPORTE: I'll be all right.

7 HEARING OFFICER BROOKOVER: Let's take a
8 five-minute break.

9 (A short break was taken.)

10 HEARING OFFICER BROOKOVER: Let's reconvene.
11 We are on G, is that correct?

12 MS. SWEM: You admitted G.

13 HEARING OFFICER BROOKOVER: Now you're on H,
14 counsel.

15 MR. DELAPORTE: It's the same thing as we
16 commented and just as a quick sidebar, we are going to
17 try and screen shot and see if the screen shot will
18 print tonight and forward those to you.

19 HEARING OFFICER BROOKOVER: Well, we need to
20 proceed today, and can you made a representation to me
21 as an officer of the court this is identical to what
22 the actual document you received on the FOIA is?

23 MR. DELAPORTE: Yes.

24 HEARING OFFICER BROOKOVER: You just retyped
25 it for clarity?

1 MR. DELAPORTE: To allow us to move it from
2 their electronic format.

3 HEARING OFFICER BROOKOVER: I understand.
4 Ms. Swem, any objection?

5 MS. SWEM: I understand your ruling. Just
6 for the record, in looking at the original document
7 there's a typo in that that's not reflected here. I
8 don't think that's material.

9 HEARING OFFICER BROOKOVER: It will be
10 admitted. Exhibit I.

11 MS. SWEM: No objection.

12 HEARING OFFICER BROOKOVER: It is admitted.
13 Exhibit J.

14 MS. SWEM: No objection.

15 HEARING OFFICER BROOKOVER: It is admitted.
16 Exhibit K.

17 MS. SWEM: No objection.

18 HEARING OFFICER BROOKOVER: It is admitted.
19 Exhibit L.

20 MS. SWEM: Objection. These documents are
21 incomplete. Exhibit L reflects the July 20th, 2020
22 and August 24th, 2020 excerpts from school Board
23 meetings. They are excerpts and not the entire
24 document. We have no objection to admitting Board
25 minutes, the complete Board minutes from those

1 dates --

2 MR. DELAPORTE: We have no problem with that.
3 That's perfectly fine. We will replace these with the
4 July 20 and August 24th, per their request.

5 HEARING OFFICER BROOKOVER: Can we arrange to
6 get those run while we're in session?

7 MS. SWEM: Yes.

8 HEARING OFFICER BROOKOVER: Let's do that and
9 then -- I'm going to admit these subject to the
10 submission of the entire minutes so that everybody can
11 see where the excerpts were from.

12 Exhibit M.

13 MS. SWEM: Noting there is some duplication
14 of previous exhibits, no objection.

15 HEARING OFFICER BROOKOVER: They are
16 admitted. Exhibit N.

17 MS. SWEM: Noting that the Mazzola e-mail is
18 the same as our Exhibit I, no objection.

19 HEARING OFFICER BROOKOVER: Exhibit N is
20 admitted. Exhibit O.

21 MS. SWEM: No objection. Those are Board
22 policies.

23 HEARING OFFICER BROOKOVER: Exhibit P. I
24 didn't quite understand what you said, counsel.

25 MR. DELAPORTE: I had indicated that with the

1 exception of P and X, all the rest had been received
2 from FOIA. P is a document pulled from the Michigan
3 school data from the Department of education. It's
4 the REP.

5 HEARING OFFICER BROOKOVER: I'm sorry?

6 MR. DELAPORTE: It's what's called the REP.

7 HEARING OFFICER BROOKOVER: R-E-P?

8 MR. DELAPORTE: Yes.

9 HEARING OFFICER BROOKOVER: Counsel?

10 MS. SWEM: There's no authentication for this
11 document and I question its relevance. I'd like to
12 hear from counsel on those grounds.

13 MR. DELAPORTE: It's self-authenticating.
14 Number one, it's a government document. Two, it's
15 relevant because, frankly, my client has been the
16 force and the only force behind attempts to grow the
17 minority student population and also to hire as many
18 minorities as possible, and that's the relevance
19 because he is being accused of, frankly, racism.
20 That's really what they are trying to get at through
21 their charges, and I think it's fair that the document
22 showing that he has, that when he came in there was a
23 single minority hire. Now there's 60, 60 times the
24 amount than when he came in. He has doubled the
25 minority student population. I think that's relevant

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to what we're talking about here.

HEARING OFFICER BROOKOVER: I'll admit it, and counsel for the Charging Party can comment as she feels necessary as to whether it is meaningful or relevant or valid or whatever. That's admitted. I'm at, that was P, correct? Q.

MS. SWEM: That's the District's grievance procedures for various civil rights documents. No objection.

HEARING OFFICER BROOKOVER: It is admitted. R.

MS. SWEM: That's Dr. Gabriel's response to Dr. Metcalf's FOIA request. I question the relevance, not authenticity. This is not about FOIA litigation.

MR. DELAPORTE: It is about giving my client the opportunity to defend himself, and that document shows that they made numerous rejections of items that he needed to defend himself.

HEARING OFFICER BROOKOVER: Well, it's admitted. It's subject to other litigation and as I've already indicated today and in my prehearing opinion, we're conducting this according to Loudermill, which means that he has his opportunity to tell his side of the story. So that will be admitted.

Exhibit S, I assume has already been

1 admitted?

2 MS. SWEM: Yes, no objection to Dr. Metcalf's
3 employment contract.

4 HEARING OFFICER BROOKOVER: T, any objection?

5 MS. SWEM: We can stipulate. These are Board
6 minutes with Dr. Metcalf's performance evaluation
7 ratings as well as his hiring. No objection.

8 HEARING OFFICER BROOKOVER: U.

9 MS. SWEM: I'd like to hear from counsel
10 about the basis for this. I will not stipulate. In
11 fact, I object.

12 HEARING OFFICER BROOKOVER: Mr. Delaporte?

13 MR. DELAPORTE: This is a communication
14 between the former Board president at the time that
15 Dr. Metcalf's contract was put into place. His
16 contract was specifically created to protect him in
17 case he made some decision or took some action that
18 was unpopular in the community.

19 MS. SWEM: Counsel is testifying, objection.

20 MR. DELAPORTE: Well, that's why I have
21 Mr. Ray Davis on my witness list.

22 HEARING OFFICER BROOKOVER: You are both
23 presenting evidence in whatever way you think is
24 appropriate. So, I appreciate there's arguments
25 between counsel, and Respondent's counsel is going to

1 be able to comment on the various exhibits as he sees
2 fit in terms of his presentation of evidence just like
3 you did, Ms. Swem.

4 I have a couple questions on this. So, maybe
5 I misunderstood something and maybe I don't have
6 enough local knowledge. Who is Linda Wacyk?

7 MR. DELAPORTE: Wacyk, and it's the former
8 Board president. She was Board president at the time
9 that the just cause language was inserted into his
10 contract.

11 HEARING OFFICER BROOKOVER: Okay. So this is
12 part of the contract formation and discussion with the
13 prior president relative to whatever contract was
14 being negotiated in 2016, is that correct?

15 MR. DELAPORTE: That is when the just cause
16 language was put in that exists in the current
17 contract in the exact same manner that was exhibited
18 in 2016.

19 HEARING OFFICER BROOKOVER: And the
20 handwriting on this document?

21 MR. DELAPORTE: That is Dr. Metcalf.

22 HEARING OFFICER BROOKOVER: Contemporaneous
23 with the e-mail or subsequent?

24 MR. DELAPORTE: Contemporaneous with the
25 e-mail.

1 HEARING OFFICER BROOKOVER: I'll allow it.
2 There is a just cause standard here.

3 MS. SWEM: May I note my objection?

4 HEARING OFFICER BROOKOVER: I'm sorry, your
5 objection is noted for the record, I'm sorry.

6 MS. SWEM: I haven't had an opportunity to
7 state my objection. I stated that we did not
8 stipulate. I stated that I objected, but wanted to
9 first hear the reason for the offering. I would like
10 to now state the reason for my objection.

11 HEARING OFFICER BROOKOVER: Which is?

12 MS. SWEM: Which is, number one, this is a
13 legal conclusion. The contract, paragraph 16
14 states -- it's traditional zipper clause that we find
15 in contracts, that it's the entire agreement and
16 understanding by the parties, and the foundation of
17 this is certainly weak. I now know what the
18 handwritten notes are on it, but to the extent there's
19 any purpose for interpreting what the just cause
20 provision in the contract means, it's inappropriate
21 for any parol evidence, especially in light of the
22 zipper clause. That's my objection.

23 HEARING OFFICER BROOKOVER: Your objection is
24 overruled. I'll allow it. Of course, you can argue
25 that exact point to the trier of fact.

1 V I think you wanted to have some discussion
2 about?

3 MS. SWEM: Well, it's not clear what V as in
4 Victor is about.

5 HEARING OFFICER BROOKOVER: Do I even have V?
6 I have an insert that says, See employer's FOIA
7 response for the Board Member e-mails. That isn't the
8 one you sent late yesterday afternoon, is it?

9 MR. DELAPORTE: No, this was, and we were
10 trying to save a tree. It's already been admitted
11 under their N.

12 HEARING OFFICER BROOKOVER: Their N?

13 MS. SWEM: This is our N?

14 MR. DELAPORTE: Trying to save a tree.

15 HEARING OFFICER BROOKOVER: We'll stipulate
16 for the record that Exhibit V of Respondent is
17 identical to Exhibit N of Charging Party, which I
18 think we removed a few documents from. So with that
19 understanding, it's already before the hearing panel.
20 Mr. Delaporte, anything else?

21 MR. DELAPORTE: No. And I apologize, I had
22 originally said P and X were the only ones that were
23 not gained through FOIA. Exhibit W also was not
24 gained through a FOIA. It was taken from the Chamber
25 of Commerce website.

1 HEARING OFFICER BROOKOVER: We're at Exhibit
2 W now?

3 MR. DELAPORTE: I believe so.

4 HEARING OFFICER BROOKOVER: The purpose of
5 that?

6 MR. DELAPORTE: Just to show that he remains,
7 Dr. Metcalf remains Chamber president.

8 HEARING OFFICER BROOKOVER: Do you have any
9 reason to contest that, Ms. Swem?

10 MS. SWEM: I do not.

11 HEARING OFFICER BROOKOVER: The Grand Ledge
12 Chamber of Commerce has decided to retain Dr. Metcalf
13 as Chamber president in view of things that have
14 happened in the last several months. That is a fact
15 that is now in evidence. X.

16 MR. DELAPORTE: SCI, Safari Club
17 International. The Lansing area chapter is actually
18 located here in Grand Ledge. It is a prominent
19 organization, 350 members. It is being produced
20 simply to show these 350 community members, despite
21 the attempts to ruin his reputation, still elected
22 Dr. Metcalf as their president.

23 HEARING OFFICER BROOKOVER: And I assume when
24 you use the term "community", you are not restricting
25 your definition to the City of Grand Ledge or the

1 School District of Grand Ledge, you're talking about
2 the wider community in the general metropolitan area?

3 MR. DELAPORTE: Yes.

4 HEARING OFFICER BROOKOVER: Ms. Swem, any
5 objection to this?

6 MS. SWEM: No.

7 HEARING OFFICER BROOKOVER: It is admitted.
8 Anything else in terms of exhibits, Mr. Delaporte?

9 MR. DELAPORTE: Z.

10 MS. SWEM: Y.

11 MR. DELAPORTE: Or Y, sorry, and then Z. Y
12 is --

13 HEARING OFFICER BROOKOVER: Are those the
14 ones we got overnight?

15 MS. SWEM: These came last night, one at 9:54
16 p.m., the other at 10:27 p.m., well outside of the
17 hearing officer's deadline to submit exhibits by 5:00
18 p.m. on September 18th.

19 HEARING OFFICER BROOKOVER: I just want to
20 know, I have Y? Counsel, your position with regard to
21 Y?

22 MR. DELAPORTE: The Board of Education and
23 its attorney took three months to come up with the
24 charges, okay, and it's not much in the way of
25 charges, three months. They withheld documents until

1 the last moment, and in the last five days they did
2 document dumps on us. We were scrambling to file a
3 brief on your behalf and at the same time to actually
4 read what was given to us, thousands of pages. Some
5 documents were hidden. They were part of the FOIA
6 request. They were hidden until the last minute,
7 Friday, at I think we received them at 4:00.

8 The fact that we just received all these
9 documents within the last week, we had a chance to
10 read through them, we worked over the weekend and,
11 yes, there were two other documents that we found and
12 thought they were important for this hearing. The
13 fact that they took three months --

14 HEARING OFFICER BROOKOVER: Sir, I
15 understand, I'm not trying to be your problem, and I
16 am not really concerned with that dialogue between you
17 and Ms. Swem. What I'm telling you is just tell me
18 how you think this particular document is relevant
19 please.

20 MR. DELAPORTE: These documents are documents
21 where the Board members interacted with community
22 members. In some cases they are egging on the
23 community. There are some time that they are
24 indicating that Dr. Metcalf has been fired. There are
25 various communications between the Board members and

1 community members, and we think all of that is
2 relevant.

3 HEARING OFFICER BROOKOVER: I'm referring to
4 Exhibit Y.

5 MR. DELAPORTE: That's what I'm referring to.

6 MS. SWEM: I'd like to respond when you're
7 ready.

8 HEARING OFFICER BROOKOVER: Hang on. This is
9 a --

10 MR. DELAPORTE: It also includes a very
11 important -- these were responsive to several FOIA
12 requests, one of which was dealing with any incidences
13 of racial unrest or issues involving race, et cetera,
14 within the, within the District. One of them includes
15 an instance in which Confederate flags were flown in
16 the District, and the minority student in the
17 classroom had a slave label put on her. It was quite
18 a, you know, obviously a big deal. It goes to show
19 that my client was the one who was trying to deal with
20 them while others were still supportive of the
21 Confederate flag and the program that resulted in that
22 person having the slave label put on them, and that
23 includes certain Board members who, frankly, you know,
24 they are the ones who were encouraging the retention
25 of that program. It shows that Dr. Metcalf took the

1 side of those who had been insulted by this entire
2 thing. He banned the flags. He did away with the
3 part of the program in which the individual was, you
4 know, assigned a slave role, you know. So that's what
5 it goes to.

6 HEARING OFFICER BROOKOVER: I'm sorry, maybe
7 I misunderstood. Y is this entire set? I
8 misunderstood. Y is this entire set of several pages?

9 MR. DELAPORTE: As I said, there are multiple
10 reasons that we're introducing this.

11 HEARING OFFICER BROOKOVER: Yeah, I just want
12 to figure out for the record, there's Y and it's
13 several pages, and then there's a Z with one page at
14 the end. So Y is all of the pages before Z?

15 MR. DELAPORTE: Yes.

16 HEARING OFFICER BROOKOVER: Okay. I
17 misunderstood, that's all. Okay. Ms. Swem, response?

18 MS. SWEM: Yes. Ms. Starlin is going to
19 respond.

20 MS. STARLIN: I want to respond to a comment
21 that Mr. Delaporte made about the reason for the
22 tardiness for this exhibit which he --

23 HEARING OFFICER BROOKOVER: Counsel, with all
24 due respect to you, I'm, I'm mindful that the two of
25 you are protecting your clients. I am not concerned

1 about the tardiness of the exhibit. So please, let's
2 not argue about that please.

3 MS. STARLIN: With that, other than
4 relevance, I don't think it goes to the issues here.
5 We would have no objection, but I would like to note
6 that Dr. Metcalf had this packet on June 29th, 2020.
7 He did not receive it on Friday at 5:00 p.m.

8 HEARING OFFICER BROOKOVER: Okay. Your
9 statement is on the record as is your objection.
10 Exhibit Y will be admitted and the parties can argue
11 about its relevance, significance, et cetera, relative
12 to the charges before the panel today. Y is admitted.
13 Now Z.

14 MS. SWEM: There is not a stipulation but we
15 request an offer.

16 HEARING OFFICER BROOKOVER: I am looking for
17 Mr. Delaporte to comment on Z.

18 MR. DELAPORTE: Z is an e-mail put out by the
19 union president. This is the same union president
20 which is the same union president who spoke at the
21 June 5th meeting, so in shock by what Dr. Metcalf
22 said. Here again, he is warning his union members
23 that the NAACP is coming and they should take whatever
24 action is right for their families. And obviously,
25 that could be interpreted in multiple ways, one of

1 which is that he was frightened that the African
2 American community was coming to town and was warning
3 his members. That's one of the ways that this could
4 be interpreted.

5 I think it's relevant because this Board of
6 Education has misinterpreted my client's statements,
7 yet they didn't punish Mr. Almy for his. He had to
8 scramble the next day and back off and just try and
9 clarify and try to avoid the implications of the
10 statement here. The Board was fine with that, but
11 they have taken no action to discipline him. Again
12 it's disparate treatment which goes to the charges
13 against my client and how he was misrepresented.

14 HEARING OFFICER BROOKOVER: Mr. Almy is a
15 teacher?

16 MR. DELAPORTE: He is a teacher and the union
17 president.

18 HEARING OFFICER BROOKOVER: Subject to a
19 collective bargaining agreement?

20 MR. DELAPORTE: Yes.

21 MS. SWEM: We note for the record this was
22 submitted past the deadline. I also note if you look
23 at the document itself, the to line is empty. So it's
24 not clear to whom this was directed. I do note that
25 Mr. Almy was listed on the Respondent's witness list,

1 and with any deficiencies with the document itself,
2 perhaps that can be addressed. So I do not stipulate.

3 HEARING OFFICER BROOKOVER: Your objection is
4 noted. It's going to be admitted with the
5 understanding that Respondent's counsel has indicated
6 that this is subject to many different
7 interpretations, and one of them, it would appear, he
8 will advance in his additional proofs, so it's
9 admitted. Anything further on exhibits?

10 Mr. Delaporte, what do you wish to do next?

11 MR. DELAPORTE: I wish to address a couple of
12 issues that have arisen after Ms. Swem rested. I'd
13 like to address the charges, if I may, and then go
14 into my opening.

15 HEARING OFFICER BROOKOVER: Thank you. Is
16 this actually separate from your opening or part of
17 your opening?

18 MR. DELAPORTE: I guess we can call it part
19 of my opening.

20 HEARING OFFICER BROOKOVER: If you will
21 recall, we are trying to limit ourselves to 15 minutes
22 on the opening. Go ahead please.

23 MR. DELAPORTE: Give me one second.

24 HEARING OFFICER BROOKOVER: Sure.

25 MR. DELAPORTE: In all the shuffling, I have

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set aside my copy of the charges.

HEARING OFFICER BROOKOVER: While you're shuffling, Board, we have admitted a substantial portion of the package that you have in front of you from the Respondent. There are a few that we're going to excise a few comments, and that will be taken care of at a break. Otherwise, those exhibits are before you.

MR. DELAPORTE: Eureka! I am prepared.

Mr. Brookover, may I?

HEARING OFFICER BROOKOVER: Yes, sir.

MR. DELAPORTE: Thank you. When I started out today I had a few interesting stories to tell. I planned on starting out in a particular way, but at this point I'm not sure I need to. I mean, obviously Dr. Metcalf is guilty. We should tar and feather him. We should fire him for, is this the third time or second time? Anyway, we should fire him, right? Because of that just stunning case that was put on just a few minutes ago. The problem with that stunning case is that it didn't actually substantiate the charges. The charges are based on Facebook comments which were off duty, unrelated to the school on a matter of public discourse, otherwise known as protected by the First Amendment. Connick, Pickering,

1 Garcetti, none of the key cases and the cases that
2 flow out of them, change the fact that this is a
3 protected First Amendment action.

4 Just a couple of weeks ago in a case called
5 Marquardt, the 6th Circuit took on an almost identical
6 issue. In this case, though, unlike Dr. Metcalf who
7 was trying to provide some guidance that might help
8 people avoid these types of situations; this person
9 was using offensive language, all kinds of derogatory
10 comments, et cetera, attacking language, the whole
11 works, yet the 6th Circuit found in favor of that
12 employer. Now they sent it down to the courts to have
13 a look at a couple other factors that are not at issue
14 here. But they supported that individual and found
15 that the public entity, I think it was an EMT
16 situation, I believe the man was the captain of the
17 EMTs, that they should not be given summary
18 disposition. In fact, you know what they had done,
19 what he had engaged in was clearly First Amendment
20 protected activity. Here, Dr. Metcalf is in a much,
21 much better position for a First Amendment claim.

22 In 2017, in 2017, you had a recent graduate
23 involved in an incident with the police in which he
24 was shot. On behalf of the District, because this is
25 part of his duties as the chief executive officer to

1 make statements to the press, your superintendent
2 noted that had he obeyed the law, had he lived
3 lawfully, essentially, he would still have been alive,
4 he would not have been in this situation. And the
5 Board, those of you who were on it at the time,
6 praised Dr. Metcalf. He received a highly effective,
7 especially highlighting his work with community
8 relations, and comments were made to him about your
9 happiness at the statement that he had made.

10 Now, he was having his private own little
11 conversation on May 30th. That wasn't a press release
12 for this District, but it was an analogous situation.
13 And what did he do, hey, live a lawful life and you
14 can avoid these kinds of things. Now in one you
15 praised him and the other you didn't. Why?
16 Could it be that in that case it was a white student
17 and in this case it was a black student, a black
18 individual? Could it be that perhaps you as a Board
19 lacked the intestinal fortitude to stand up to the
20 crowd. The crowd came with pitchforks and torches
21 and, all of a sudden, this Board of Education looked
22 for somebody to throw under the bus, and I have no
23 doubt that you are going to vote to fire him. You've
24 done it once. Why stop at once? Let's fire him now.
25 This is a dog and pony show so that you can try and

1 claim that he had due process. First you've hidden a
2 bunch of documents from him, you have not given him
3 the information he needed to defend himself. You've
4 hamstrung him at every single turn. I don't think
5 anybody in this audience right now thinks that
6 fairness is being served.

7 (Several unidentified audience members
8 responded "I do".)

9 MR. DELAPORTE: Great. Anybody here --

10 HEARING OFFICER BROOKOVER: We're not going
11 to engage in a dialogue with the audience. If the
12 audience would keep their thoughts to themselves, I
13 would appreciate it. Let's proceed with the hearing.

14 MR. DELAPORTE: You know the funny part is
15 your firing because 600 people showed up to an on-line
16 Board meeting, the vast majority of which probably
17 weren't even part of the community. In fact, did you
18 take time to look to see if they were part of the
19 community, if they were stakeholders in this District?
20 We did. Almost half of them weren't. Of the other
21 half, the ones that were stakeholders, a vast majority
22 of them complained about behavior that occurred before
23 my client even came to this District. It occurred
24 under your watch. Yet all of you are sitting up
25 there, no one said, hey, I really screwed this up, I'm

1 going to resign. Why? A bunch of the stuff that was
2 brought up on June 5th happened under your watch. It
3 didn't happen under Dr. Metcalf's watch. He wasn't
4 even here.

5 Since he arrived, he has hired 60 times the
6 amount of minority, minority workers and employees
7 than occurred under you. 60 times. He has doubled
8 the amount of minority students. He has fought to
9 remove Confederate flags from the classroom.

10 Ms. DuFort, you were a union rep at the time. The
11 union took the position that the teacher had done
12 nothing wrong and that she should not be punished in
13 any way. Yet Dr. Metcalf still removed that portion
14 of the program that caused the placement of a slave
15 marker on a minority student. Dr. Metcalf fought to
16 remove the Confederate flag.

17 Dr. Metcalf fired a coach who had yelled that
18 the taco truck was there to a Hispanic coach.

19 Dr. Metcalf fired him. Dr. Metcalf punished a
20 maintenance supervisor who decided to use the N word
21 while talking to his subordinates, including an
22 African American. That person complained, rightfully
23 so, and Dr. Metcalf was the one who disciplined the
24 individual and ensured that it would not happen again.

25 He has been on the forefront of trying to

1 integrate this school, and he's been fought at every
2 turn, but somehow you've decided that this person is
3 the sacrificial lamb that we will throw to the crowd.
4 And that's what happened.

5 You can follow your text messages, your
6 e-mails. No one is really complaining on May 30th,
7 May 31. On June 1st, we're still okay. On June 2nd,
8 now the crowd is starting to build, so we have all
9 seven of you violating the Open Meetings Act, talking
10 to each other, figuring out how you're going to word
11 the apology and Board statement. You dictate the
12 apology to my client, and then you charged him because
13 the crowd didn't like the apology. You came up with
14 it. You dictated it to him. And now you're charging
15 him with what you did. You made the mistake in that
16 apology. You did not apologize in a manner in which
17 the crowd would accept, but now you're blaming him for
18 your words. Every single one of you should be ashamed
19 of yourselves. This is nothing but a modern tar and
20 feathering. You've ruined his life. You have ruined
21 his career. He has no chance in education anymore
22 because of what you did. And let's not play games.
23 This isn't about a legitimate, laudable comment made
24 on Facebook, which clearly stated that he was not
25 victim blaming, that the police officer was wrong and

1 the police officer should go to jail. My client
2 understood that. Nor did he think that the only
3 answer was living a lawful life because we all know
4 that an African American can be driving down the
5 street doing everything right and if he gets a bad cop
6 he can be pulled over, but there are a lot of good
7 cops too. There are a lot of people who want to do it
8 right. Dr. Metcalf is one of those people. He is not
9 a police officer, but he is trying his best to do what
10 is right for your minority population by removing
11 Confederate flags, by ensuring that your minority
12 students aren't labeled as slaves. He is trying his
13 very best, but instead of having a spine and saying
14 no, he meant well, he meant right, we are not going to
15 do this to this man. Instead, you have destroyed his
16 career. He will never can be able to be a
17 superintendent or a building principal or anything in
18 a school district in Michigan. That ship has sailed
19 the way you guys have made statements to the press,
20 made statements to the community.

21 Oh, you're so shocked. You weren't shocked
22 when your teachers were putting slave patches on
23 African American students. There wasn't much shock
24 there, but now you're shocked at poor Dr. Metcalf
25 because the crowd came with pitchforks and torches and

1 you needed to throw somebody under the bus. That's
2 what really happened here.

3 And you've denied him every single
4 opportunity to defend himself. He wants certain
5 documents. Nope, not going to give it to him. You
6 took three months to respond to a FOIA request for
7 documents that he needed to defend himself, three
8 months. And you only produced them when you were
9 sued. And you dumped them on him, thousands of pages,
10 but, hey, that's fair. I'm sure he had a real good
11 opportunity to go through and read every single one of
12 them and figure out what he needed to defend himself.

13 Ms. Sara Clark Pierson in her e-mails egging
14 on the crowd to show up and be more aggressive. You
15 need to be louder. Did you tell all those people
16 about how when somebody is discussing somebody of
17 Indian descent you say "dot" or "how"? Did you? Of
18 course not, because you want to defend yourself. You
19 don't want the crowd coming after you. And you can't
20 deny that. We have too many witnesses on that.

21 The charges contain specific allegations.
22 First, it's based on the public reaction. Wednesday
23 or Thursday a supporter of Dr. Metcalf threw up a
24 website, supportbrianmetcalf.com. Didn't put it out
25 on Facebook, didn't go out of his way to promote it.

1 Sure wasn't promoted by me or Dr. Metcalf. I don't
2 use social media, and he has already withdrawn his
3 Facebook page. However, in the couple days, three or
4 four days that it's been around, it has garnered 2,000
5 signatures, 2000. If you want to talk about public
6 reaction, then you better take both sides.

7 You said there was 600 people at the June 5th
8 meeting. Great. Did you bother to check whose side
9 they were on, because you cut public comment off
10 halfway through? His supporters, only a couple of
11 whom had a chance to speak. So you had 100 people
12 speak, and I think it's a few less than that but let's
13 say 100. You had 500 other people. How do you know
14 that those 500 other people weren't supporting
15 Dr. Metcalf? You don't, because you didn't conduct an
16 investigation.

17 Oh, by the way, under a just cause standard
18 there is a seven point test. One of the most
19 important parts of that seven point test is did, did
20 the employer conduct a fair investigation. I can tell
21 you that your answer is going to have to be no when
22 that issue comes up in arbitration. It's going to
23 have to be no because you didn't conduct an
24 investigation. You didn't come and question my
25 client. You didn't get his side. He didn't have a

1 chance to tell you that the person who started all
2 this, he had referred them to the police for
3 embezzling from the PTO. Oops! You didn't conduct an
4 investigation at all, zero.

5 Failed one of the fundamental tests. You
6 violated his First Amendment rights, you violated his
7 due process rights, you violated FERPA or FOIA, you
8 violated the Open Meetings Act and now just cause.
9 There are all kinds of nice -- the seven point test.

10 Let's see, notice. Did the employer receive
11 adequate notice of the work rule performance standard?
12 No. Why? Because this was not activity that occurred
13 at work. This was on his own time. It was covered by
14 the First Amendment. You have no right to fire him.
15 If you do, it is retaliation for him exercising his
16 First Amendment rights. There are four lawyers up
17 there, and out of the four lawyers you would think
18 that somebody might go, huh, I wonder if he has a
19 First Amendment right.

20 We have the communication from the former
21 president of what standard was expected, because when
22 he was negotiating the just cause standard he just
23 wanted to be protected if the crowd became unhappy at
24 what he did or what he had to say, and the protection
25 was that wouldn't fall under just cause, just cause

1 would be for big things, if he had somehow stolen
2 money or sexually harassed somebody or something like
3 that, something big. But here you are trying to keep
4 him from getting the benefit of his contract that he
5 negotiated, and your own e-mails talk about I just
6 don't want him to get paid, I don't want him to get
7 money from his contract. Hey, congratulations, you
8 fired him in secret, now you're going to fire him
9 again here in a few minutes, and your whole goal isn't
10 fairness, it's not giving a shining example for your
11 students, it's trying to save a couple bucks while you
12 destroy his life. Shame on every single one of you.

13 This isn't only about a job. You went, you
14 took the path that would destroy him. He has given
15 his everything for this District. He had given
16 everything for these kids. He has shielded them from
17 racism. He has disciplined people who were involved
18 in that kind of behavior. He has done everything he
19 can. He has doubled the amount of minority students
20 in this District. He has hired 60 times the amount of
21 minority individuals into employment in the
22 Grand Ledge Public Schools. He is doing everything
23 right, but you guys were scared of the crowd. You
24 lost your intestinal fortitude and you decided to
25 throw him under the bus, and the funny part is in your

1 e-mails you can see the progression. Oh, oh, we might
2 have a problem. No big deal. We'll put out this
3 apology, make him take a class, put something in the
4 file. As long as he agrees to that, that will be all
5 we have to do and we'll move forward. That's a quote
6 from your e-mails that have been admitted.

7 You guys were busy thinking no big deal. You
8 gave him discipline. And then when the crowd kept
9 going and they weren't happy with the apology
10 statement that you guys wrote, not my client. My
11 client didn't put it out, it didn't go under my
12 client's e-mail, it went, by the way, under
13 John Ellsworth's e-mail, out to the community after it
14 was dictated to him by Ms. DuFort, and don't try
15 blaming her like I've seen some of you do when you are
16 talking to the constituents, oh, it was Ms. DuFort,
17 she's taking full responsibility, it was her fault.
18 Everybody here, and one of you had the guts, and I'm
19 so proud of that one person, in one of the Board
20 meetings minutes said, yeah, we all saw it, we were
21 all part of it. Thank God that person is telling the
22 truth while the rest of you scramble under the
23 furniture. And that's what's happening here.

24 Every single one of you ought to look back
25 and think about how they have responded to this and

1 whether you gave him a clean, fair process. And it's
2 not fair if you fire him on June 5th and then you wait
3 three months to wait around to giving him charges.

4 And don't tell me he was getting paid. It's
5 pretty obvious from the e-mails that there was a quick
6 scramble to try to clean up that little oops on June
7 5th.

8 All of you were involved prior to that in
9 creating the apology statement that was dictated to
10 him that he then agreed to and said, yes, I'll put
11 this out. It was put out by John Ellsworth, but he
12 agreed to your terms. He agreed to do the class. He
13 has taken now two classes, not one, he has taken two
14 and he is on his path to finishing two more classes
15 from Cornell on diversity and how to understand
16 everybody and how to better project that as a leader.
17 Here he is trying to better himself in keeping with
18 your agreement. He's done everything you asked him
19 to, but you guys figured out on June 3rd and June 4th
20 that, boy, that apology letter wasn't going to get us
21 there. Our statement as a Board statement, that's not
22 going to get us there. The crowd is still mad.

23 And you were being egged on by Ms. Sara Clark
24 Pierson. Let's not play games. You played a huge
25 role in this. You were just egging on, you were

1 passing out the pitchforks to the crowd, trying to get
2 them all fired up. You can't be an unbiased fact
3 finder when you're cheering on the crowd that is out
4 to get my client. You caused the fiasco that was June
5 5th, and everybody sees it, it's been admitted into
6 evidence. In that letter to you prior to the June 5th
7 meeting, what did my client request? Anybody? What
8 did my client request? He requested a closed session
9 to consider any complaints against him. Guess what?
10 All you had to do was go into closed session and
11 consider complaints against him, and the crowd would
12 have melted away. But that's not what you wanted.
13 You needed to give them a sacrificial lamb. I have
14 the e-mails in which they are in evidence in which you
15 are getting threatened by this Mr. Spalding, our
16 professional agitator. He gets paid to do this
17 normally but, gosh, he's happy to do it right now.
18 That's all over his blog.

19 And he is threatening you guys with getting
20 you kicked out of your position, having the crowd show
21 up and keep it up and keep the unrest going. And what
22 did you do? Instead of standing up to him and saying,
23 fine, if the community wants to recall me they can
24 recall me, but I'm going to stand up for what's right.
25 That would have been a shining example for your

1 students. But you didn't do that, did you?
2 HEARING OFFICER BROOKOVER: Counsel, you've
3 been going around 30 minutes. Can you wrap it up here
4 in about five minutes please?
5 MR. DELAPORTE: I can switch right now to the
6 evidence.
7 HEARING OFFICER BROOKOVER: Done with the
8 closing argument?
9 MR. DELAPORTE: Done with the opening
10 argument.
11 HEARING OFFICER BROOKOVER: Opening argument,
12 excuse me. So, we're proceeding to any further proofs
13 you want to put in over and beyond the exhibits?
14 MR. DELAPORTE: You bet. No, I want to put
15 in the exhibits and I want to comment.
16 HEARING OFFICER BROOKOVER: The exhibits are
17 in, they are admitted, so your commentary is
18 appropriate now.
19 MR. DELAPORTE: In these charges he is
20 charged with a June 1st, 2020 e-mail that he sent out,
21 except, oops, he didn't send it out, did he?
22 John Ellsworth sent it out. John Ellsworth was the
23 first one to recommend that they prepare a statement.
24 He's the one by his own admission that first put out
25 the document. Now he is trying to cover himself after

1 you didn't discipline him for choosing to use a
2 statement that included the N word. Oh, I'm sorry, I
3 guess it's all funny now. The N word is funny. I see
4 Ms. Clark Pierson laughing up there. You think that's
5 funny? You think that the word "Negro" is funny? I
6 don't doubt that you think it's funny. I don't doubt
7 that your supporters out here think it's funny. It's
8 not. But you sure didn't discipline him, did you?
9 You took no action against Mr. Ellsworth. You took no
10 action against Mr. Almy. Oh, no, the NAACP is coming.
11 Run. You took no action. Could he have meant
12 something else? Sure. But so could have Dr. Metcalf.
13 Didn't give him the fair shake. You gave him nothing
14 except hiding evidence from him, hiding FOIAs,
15 withholding them. You, Ms. DuFort, are on the Board
16 minutes saying, oh, we've been told by our lawyers not
17 to release them, so we're just going to sit on them.
18 I paraphrase, of course.

19 The District has the burden of proof in this
20 case. The burden of proof is not on my client. Your
21 June 1st e-mail which forms the basis for one of the
22 legs of your charges was not recommended, was nowhere
23 in my client's mind until Mr. Ellsworth recommended
24 it. By the way, knowing he might hurt the District,
25 he went ahead and republished Dr. Metcalf's comments.

1 Have you done anything to him? He knew he was going
2 to hurt the District. He's got a fiduciary duty to
3 this District that he just ignored by reposting those
4 comments, but you haven't done anything to him, have
5 you? No, he's not the one you want to throw to the
6 wolves.

7 So one of your legs crumbles because he was
8 not the one that initiated that statement. It was
9 recommended to him by the District's communications
10 director. It wasn't even completely written by him
11 and it wasn't sent out by him. That was
12 Mr. Ellsworth.

13 Then we come to the June 2nd Metcalf e-mail.
14 See, that's the other leg of your charges. The
15 problem is my client didn't write it. My client
16 didn't invent it. My client didn't conspire together
17 in violation of the Open Meetings Act to come up with
18 it. That was you. Meanwhile, one of your Board
19 members was stirring up the crowd, getting them all
20 fired up to cause problems for Mr. Metcalf, but that
21 person evidently is an unbiased fact finder, and she's
22 going to vote on whether the crowd prevents him from
23 being competent. This whole thing is a joke. None of
24 you are being fair to him and you know it. That's the
25 bad part. You know it. It's obvious. It's going to

1 be obvious to your students, but you're sitting there
2 letting this man's life be destroyed.

3 So the June 2nd e-mail, the only
4 participation my client had was to accept the deal you
5 were giving him, accept the discipline that you were
6 imposing and say yes to your, to your apology letter.
7 But that forms the basis as damaging reaction to
8 Dr. Metcalf's May 30th Facebook posting and subsequent
9 e-mail doubling down. That's a great phrase. Can you
10 tell me where he doubled down? Have you been able to
11 find it? I'll tell you he didn't double down. He
12 followed the advice of your communications director is
13 what he did. There's no doubling down. He took the
14 opportunity given to him by the District's employee
15 and tried to explain himself, except he wasn't the one
16 who wrote the explanation. It was written in great
17 part by Mr. Ellsworth.

18 And subsequent e-mail doubling down on his
19 Facebook statements continued to escalate, Dr. Metcalf
20 issued the following written communication on June
21 2nd, 2020. He didn't issue it, did he? He agreed to
22 it as part of your disciplinary deal. That's the
23 basis of these charges. The first two issues, neither
24 of them were initiated by Dr. Metcalf, and this key
25 one that fired up the crowd, all he was doing is

1 agreeing to what you had wrote.

2 The next point that you use, that your
3 attorney uses -- sorry, have to do it -- the next
4 point on your, the next leg, the next basis for your
5 railroading of my client is the June 4th, 2020 open
6 letter from elected officials. There are a couple
7 problems with that. Problem number one is your
8 attorney closed without ever authenticating that these
9 are actually, it was actually signed by those elected
10 officials. There's no evidence here, there is no
11 evidence at all that authenticated that letter. And
12 just as a point of order, if it was, in fact, signed,
13 it was signed allegedly by five of your District
14 commissioners. You have 15. That means ten of them
15 had no interest in throwing Dr. Metcalf under the bus.
16 What is interesting is guess who represents a good
17 chunk of those individuals on that letter? The
18 lawsuit, or the law firm that is right next to me.
19 They represent the vast majority of people who
20 allegedly signed that. You think that's fair? I'll
21 tell you right now I used to be part of that law firm,
22 and there are good people in that law firm, and I have
23 zero doubt that they did not go out and try and
24 manufacture evidence. They are good, ethical people.
25 They did not go out and do that. But it makes you

1 wonder, doesn't it, given everything else that has
2 happened?

3 Then under number nine, another basis for
4 these charges, that the Chamber of commerce wanted
5 Dr. Metcalf to resign, except, unlike this Board of
6 Education they did an investigation. Unlike this
7 Board of Education, they called Dr. Metcalf in to talk
8 to him, and they listened to him explain what he
9 intended. They listened to him and they read through
10 the actual Facebook exchange, and they came to the
11 conclusion that Dr. Metcalf was a good person who had
12 been misinterpreted and they retained him as the
13 president of the Grand Ledge Chamber of Commerce
14 because they did things fairly. They brought him in
15 and talked to him. Remember that investigation piece
16 that's required for just cause? They did it. You
17 guys didn't. You guys didn't have an investigation.
18 Nobody ever came to talk to Dr. Metcalf. No one said,
19 hey, we're going to need to talk to you and hear your
20 side of the story. Those are kind of fundamental
21 fairness issues.

22 The Grand Ledge Education Association vote of
23 no confidence. Again, during, during the case in
24 chief, the attorney for the District did not put
25 anybody on the stand to authenticate the vote, to

1 question the vote, to show the validity of the vote.
2 I'll tell you that people who tried to vote for
3 Dr. Metcalf or in support of Dr. Metcalf, their votes
4 were not counted until after the June 5th meeting.
5 They would log on, try to vote on his behalf and the
6 computer would not count their vote. They did not get
7 counted until after.

8 I also can tell you that that whopping 85
9 percent that voted, well, the problem is it's 85
10 percent of what? Because 300 teachers didn't vote.
11 You had a whole slew of teachers who didn't vote. We
12 would understand it better had Mr. Almy or his vice
13 president come up and explained the vote, explained
14 exactly what percentage out of how many teachers.
15 There could have been 15 teachers who voted and 13 of
16 them voted to get rid of Dr. Metcalf. The problem is
17 your counsel failed to authenticate that vote. They
18 failed to put on evidence of that vote. All they have
19 is a letter that they didn't even authenticate that
20 showed up. I could have written that letter. My kid
21 could have written that letter. You don't know
22 because it has not been authenticated by your
23 attorney. So it's not worth the paper it's written
24 on. We don't have the burden of proof. The District
25 has the burden of proof. So I guess there was no vote

1 of no confidence. There goes another leg.

2 We don't have a single leg yet to support the
3 charges. Every single one of them has either been
4 failed to be authenticated, not put into evidence or
5 was written by somebody else.

6 Once again, the June 5th, 2020 statement of
7 the Michigan Association of Superintendents &
8 Administrators. What's real interesting about that is
9 the only thing in evidence is that affidavit, and the
10 affidavit simply says that they voted to accept
11 Dr. Metcalf's resignation. Dr. Metcalf needed to
12 resign from them because their meetings, their work
13 conflicted with something, his classes that you had
14 indicated he needed to take as part of his punishment.

15 I'm sorry, Ms. Clark Pierson, is there a
16 comment that you'd like to make to the class?

17 HEARING OFFICER BROOKOVER: Continue with
18 your statement, will you please?

19 MR. DELAPORTE: All you have is an affidavit
20 saying they accepted his resignation. Their work,
21 MASA's work conflicted with the classes that
22 Dr. Metcalf planned to take, but that's not an issue.
23 Maybe they wanted to throw him out. Maybe he, you
24 know, they wanted his resignation and demanded it, we
25 don't know. Why? Because your attorneys didn't put

1 on any evidence of that. They just simply put forth a
2 statement that said that MASA accepted his
3 resignation. That's not what it says in the charges,
4 and that affidavit doesn't support the charges.

5 Number 12, this is your oh gosh, 600 people
6 appeared at the special meeting. We know what 500 of
7 them -- 100 of them had to say, a little less than
8 that but close to 100 had to say. What did the other
9 500 have to say? Who investigated them? Were they
10 supporters of Dr. Metcalf? Were they even community
11 members? Were they people who resided within the
12 bounds of Grand Ledge Public Schools who had a
13 stakehold in what was going on? We don't know because
14 an investigation wasn't done. I propose that those
15 500 people were supporters of Dr. Metcalf. I propose
16 that they were ready and able to speak on his behalf
17 when you cut the public out of the Zoom meeting. Now,
18 am I right? Who knows? Why? Because no one followed
19 up. There was no investigation. No one knows what
20 those 500 people wanted to say.

21 Also, no one knows if those 500 people or
22 even the 100 people that spoke had read the actual
23 statement by Dr. Metcalf and the actual Facebook
24 exchange, because people ran out and started putting
25 things on Facebook that weren't true. You all could

1 have stood up and said that's simply not what
2 happened, that's not what he wrote, that's not what he
3 intended. This is a good man who has fought for
4 racial diversity in the Grand Ledge Public Schools.
5 He has fought for minorities, to hire minorities to
6 make sure minorities came to the school to make it
7 more diverse. That's what you could have said.
8 That's what you should have said.

9 Of course, we'll never know what those other
10 500 people have to say because no one checked. No one
11 did an investigation. So that leg is gone. We don't
12 know who of those 600 people were part of the crowd
13 wanting to burn and pitchfork Dr. Metcalf and who was
14 on his side. We just simply don't know.

15 And then you mentioned the Grand Ledge
16 Guiding Principles. Of course, this was off-duty
17 conduct on a matter of public concern, otherwise known
18 as First Amendment protected speech. This had nothing
19 to do with Grand Ledge Public Schools. It became an
20 issue when one of your Board members was stirring up
21 the crowd. You guys wrote an apology letter that
22 didn't go over so well and, all of a sudden, you
23 decided time to throw him under the bus because the
24 crowd has to have somebody to blame this all on.

25 Dr. Metcalf on his own time, 11:30 at night,

1 decided to say, hey, here's another tool in the
2 toolbox to try to avoid these types of situations,
3 live a lawful life. If you're going to protest,
4 protest, but don't riot. Burn buildings, destroying
5 cars, looting, all of that stuff is wrong. It's also
6 wrong that the police officer did this to
7 George Floyd. That police officer is going to jail.
8 He is going to get his trial. He's going to go to
9 jail. George Floyd wasn't perfect in this situation
10 either. If we all live a lawful life, that's one more
11 tool in the toolbox, that's one more opportunity to
12 avoid conflict with the police. It's not the perfect
13 answer.

14 African Americans in our day and age can do
15 the right thing all the way down the line and still
16 end up in conflict with a bad police officer, and
17 that's a problem. That's something we have to fix,
18 but we don't fix it by throwing under the bus the one
19 man in this District who was fighting hard to get rid
20 of the Confederate flags, to stop people from using
21 racial epitaphs, get rid of a program where a student,
22 a minority student, an African American, a black young
23 lady got a slave patch placed on her lapel. He was
24 the one who was fighting for that. But that's what
25 you're getting rid of. That's what you're throwing

1 away. You're throwing away the guy that doubled your
2 student, your minority student population. You're
3 getting rid of the guy who hired 60 times more
4 minorities than were employed on the day that he came
5 to the District.

6 And that's all that, unlike the lack of
7 witnesses over here and the lack of authentication is
8 contained in the rep report which has been entered
9 into evidence. That's not something just pulled out.
10 That's not just a story. That's what your own records
11 that you reported to the Department of Education,
12 that's what those records say. That's evidence. We
13 are missing all the evidence for every single one of
14 these legs that are supposed to be supporting these
15 charges that Dr. Metcalf is somehow unable to continue
16 in this District.

17 2,000 people signed up for his support
18 Dr. Metcalf, supportbrianmetcalf web page, but somehow
19 because a few people sent e-mails and a crowd gathered
20 and screamed and ranted and raved, the vast majority
21 of which weren't even part of this District, that
22 justifies ruining his life, and that's what you did.
23 This isn't going to follow him only until you vote in
24 a few minutes to fire him. This is going to follow
25 him the rest of his life. He is not going to be able

1 to teach. He is not going to be able to lead. He is
2 not going to be able to be a principal, a
3 superintendent. He is not going to be able to be any
4 of those things the second that you vote to fire him
5 because you will be affirming those charges against
6 him. You will be affirming that somehow he went out
7 and victim blamed somebody. And we all know that's
8 not true. All you have to do was read what he had to
9 say. In fact, he says it loud and clear, I am not
10 victim blaming.

11 In order to vote yes to fire him, you
12 actually have to have some evidence supporting the
13 charges. Your attorney listed out all these bullet
14 points, the June 1st letter, the June 2nd letter, the
15 continued outcry. Didn't put any evidence of that in,
16 though. The June 4th open letter from elected
17 officials, forgot to authenticate it. Don't know if
18 it was sent in by a three year old. The Chamber of
19 Commerce. Oops! They didn't get rid of him. They
20 listened to him. They saw that he was a good person.
21 They saw that he was trying his best to give good
22 advice to people so they could avoid being killed at
23 confrontations with police officers, and all he was
24 asking people to do was to live a lawful life. And
25 now you're going to go to your constituents, to the

1 students of this school and say, hey, if you get on
2 Facebook and you give your personal opinion and you
3 say live a lawful life, you are worthy of derision,
4 you are worthy to be thrown to the curb and become
5 meat for the mob and we're not going to support you.

6 You have no evidence that has been put into
7 play, no authenticity, nothing that supports any of
8 these charges. You don't know what 500 people were
9 there for. You don't know if more people were going
10 to come forward to support Dr. Metcalf because you cut
11 the public out of your meeting before public comment
12 was done.

13 I can sit here and talk about our evidence.
14 I can sit here and talk about the fact that
15 Dr. Metcalf requested that complaints against him be
16 held in closed session; that you've done that for
17 everybody else, everybody else that's requested it
18 except for Dr. Metcalf. Why did you change all of a
19 sudden? Why did you decide that throwing him to the
20 crowd was better than going into closed session? You
21 guys caused that fiasco that was June 5th by not going
22 into closed session as was Dr. Metcalf's right under
23 the Open Meetings Act. How do you justify a vote
24 against Dr. Metcalf when all he asked was to have it
25 held in closed session? And you denied him, but you

1 have never denied anybody else. In fact, because of
2 your format, because it was held in, because it was
3 held on line in a Zoom meeting, you had special rules,
4 and those are contained, once again, in our exhibits.
5 And those rules said that if somebody attacked
6 somebody, an employee or a Board member, for something
7 that was off-duty conduct you would shut them down.
8 Why didn't you do that? Why did you violate your own
9 rules when you followed those rules for everybody
10 else? By your own rules, you should have shut down
11 anybody who was talking about his private First
12 Amendment protected statement, but you chose not to
13 follow your own rules. How are you going to go back
14 to your students and say, hey, we don't follow the
15 rules but we demand that you do? I'd be more than
16 happy to represent the next student that you try to
17 expel. I'll do it for free. Because how are you
18 going to answer the question you violated the rules,
19 so why not the student? How can you hold a student
20 responsible for their own actions, for their behavior
21 when you, yourselves, have not followed the rules, the
22 rules that you put in place?

23 I understand that, as has been pointed out by
24 the hearing officer and your attorney, based on a
25 federal case, your hearing officer has decided that we

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can't question the partiality of this Board. I do ask, however, that you review our exhibits and you take a look at some of your statements.

Ms. DuFort, 150 times or more, we lost count honestly, you told the community, community members and anybody else who would listen that Dr. Metcalf had already been fired. A quorum of your Board members also did the same thing. They talked about a unanimous vote on the motion to terminate Dr. Metcalf on June 5th. Do you actually think it's fair that people who fired him on June 5th are now going to consider whether they are going to fire him now after lawyers said, oops, we need to give him notice of the charges before you fire him and an opportunity to be heard, some basic due process? That's all this entire day has been about is ensuring that you check the boxes that your attorney has told you to check.

In the meantime, Dr. Metcalf fights for his very reputation, his home, his life, his family. He is going to leave here with a Board that voted that he was incompetent, had committed misconduct and all kinds of other little charges because on his own time he opined, as the First Amendment guarantees him the right to do, he opined that living a lawful life was the first step. It wasn't the only step, it was the

1 first step for everybody. And he was talking about
2 the police officer who killed George Floyd. He was
3 talking about the protesters who were doing their best
4 to peacefully protest. He was talking about you and
5 I. He was talking about everybody sitting here. He
6 was talking about the students and everybody in this
7 God blessed nation. If people live lawfully, if they
8 didn't discriminate, if they didn't have evil in their
9 hearts, if they just followed the law, things like
10 this would be less likely to happen. Not that they
11 wouldn't happen. There's still evil in peoples'
12 hearts. There are still bad cops out there. A lot of
13 good cops, but a lot of bad cops, and they are going
14 to go after the George Floyds no matter what.
15 George Floyd allegedly, according to reporters, had a
16 conflict with this particular police officer. So it
17 didn't matter if he was being arrested for allegedly
18 counterfeiting or if he had been jaywalking, somehow
19 this police officer was going to get his pound of
20 flesh, except he got the whole kabangi (sp). He
21 killed George Floyd. That was going to happen no
22 matter what, and living a lawful life wasn't going to
23 fix everything, but it sure could help.

24 If I live a lawful life, the police don't
25 show up. If the police don't show up, I don't end up

1 in a wrestling match with them and getting shot. That
2 was the message. It's not perfect. It's not the end
3 all. It doesn't accomplish everything. It wouldn't
4 have saved George Floyd, but it would have helped
5 others, and that's all he wanted to do. That was his
6 own speech on his own time. It is protected. It's a
7 valued speech on a matter of public concern protected
8 by the First Amendment. Except there was somebody
9 there that day that had been turned over to the police
10 for embezzling from your PTO. That person had an axe
11 to grind and they took a couple sentences, twisted
12 them, set them free on the internet and the crowd
13 showed up, especially after it got to a professional
14 agitator, who members of this Board of Education
15 communicated with and made assurances to about the
16 discharge of my client, Dr. Metcalf. That way Board
17 seats could be held. That way the crowd wouldn't come
18 after you. They had their target as Dr. Metcalf and
19 as long as everybody had outrage, as long as we made
20 him sit there like the whipping boy, like the
21 individual who took the blame for everything that
22 happened, then we were going to protect ourselves.
23 That's what happened.

24 Dr. Metcalf had been told not to be present
25 at the June 5th meeting. He followed your directives.

1 He absented himself. The crowd wasn't happy with
2 that, were they? They wanted to look him in the eye
3 as they destroyed his life. So what did you guys do?
4 Did you protect your superintendent? Did you give him
5 back-up? Did you say, hey, we need to go into closed
6 session as was requested, as was required by your own
7 rules? Nope. Instead, you called him there and
8 forced him to endure the embarrassment of being
9 flogged, tarred and feathered, and seeing his
10 reputation destroyed without the ability to respond.
11 How do you think he felt? I want you to dig deep
12 inside yourselves and think how do you think
13 Dr. Metcalf felt, having tried to do the right thing,
14 having tried to share one tool for minorities to
15 hopefully stay alive when they are faced with bad
16 police officers. Not the perfect answer and
17 definitely not the only answer, but maybe a tool that
18 could help them. All you were trying to do was do the
19 right thing on your own time, in your own home. And
20 all of a sudden the crowd gets started and the crowd
21 is being just egged on, being told to become
22 boisterous and aggressive and let your voices be heard
23 by one of your members. Let me be very clear, I
24 paraphrased. I can pull the exact quote if you want
25 me to.

1 And he is told to come and show up via his
2 union, but still to be there, and then you guys
3 position his picture so it would be seen by the crowd.
4 In fact, at one point his picture slips off and you
5 guys have to put him back up there. And then having
6 tried to do the right thing, you're just sitting there
7 and you're not allowed to respond, and they are just
8 bashing you, and they are bashing you having seen a
9 misrepresentation of what you tried to say. But you
10 can't say that. You can't offer that back. You are
11 not allowed to speak. And for hours and hours you
12 allowed the crowd to beat on him, to destroy his
13 reputation, to call him some of the worst names in the
14 world. I saw the comments popping up on one of the
15 feeds. He was worse than Hitler. They actually
16 called him worse than the police officer who killed
17 George Floyd.

18 But you allowed all this to happen. You
19 didn't allow him to respond. You didn't go into
20 closed session as was his right and your rules.

21 What do you think it felt like to know your
22 life was being destroyed before your very eyes and no
23 one in the Board of Education is helping you at all?
24 No one is sticking up for you. No one is saying, hey,
25 you're looking at a misrepresentation. Here's the

1 real statement from the Facebook exchange. Hey, we've
2 already disciplined for this. Double jeopardy
3 prevents us from disciplining him twice. We can't go
4 out and fire him, no. You cut off the feed to the
5 public before his supporters had an opportunity to
6 speak. You went into an illegal closed session. You
7 voted unanimously to fire him. Came out of the closed
8 session, tried to fix what you had done, reassuring
9 all of your supporters, don't worry, he's been fired,
10 7-0, unanimous motion. It doesn't matter we still
11 have to go through this process, but don't worry, he's
12 already been fired. Poor Dr. Metcalf had to turn off
13 his computer when it was all said and done and go home
14 to his family and explain to them that he was going to
15 lose his job, he was going to lose his reputation, he
16 was going to lose his career all because somebody
17 needed to throw him to the wolves.

18 He did the right thing on his own time,
19 protected by the First Amendment, our guiding
20 principles, the supreme law in our nation, the
21 document that has allowed us to move forward together
22 as one nation. That document gave him the right to
23 have an opinion on a matter of national concern and it
24 gave him the right to give the same advice that he had
25 given a couple years before, two, three years before

1 about a white former student of this District in which
2 he made the comment that that individual should have
3 lived a lawful life and that would have prevented what
4 happened. But it was okay when he was over there, now
5 that he was protected by the First Amendment, now that
6 he is on his own, now that he is trying to give the
7 best advice he can because an African American life
8 had been snuffed out by a bad police officer who
9 Dr. Metcalf very clearly said needed to go to jail
10 because he was wrong, 100 percent wrong, he was the
11 cause of George Floyd's death. There's no looking at
12 that exchange and thinking otherwise.

13 Here he was trying to do the right thing, but
14 he ran afoul of the cancel culture crowd, and they
15 needed their piece of meat before they went on to
16 somebody else. It was either going to be the Board or
17 Dr. Metcalf, and that decision was easy.

18 So you disciplined him, made him put out an
19 apology that you wrote, made him take classes. He is
20 taking not the one class that you required, he is
21 taking two classes and he is about to finish two more
22 classes for four. Dr. Metcalf decided he had not been
23 as clear as he wanted when he had written that
24 statement and he needed to understand everything about
25 that better. So he didn't take one class, he's taking

1 four at Cornell. He has followed every directive
2 you've given him. He agreed to your deal. He entered
3 into that deal, and once he had issued the apology and
4 done his part, you guys reneged. You guys decided
5 that the crowd was responding a little too much for
6 you.

7 So we ended up on June 5th, and, once again,
8 instead of letting him stay home or instead, perhaps
9 letting him shut down just to get away from all the
10 viciousness, the vehemence, you guys forced him to get
11 on there. You didn't abide by his request to hold a
12 closed session, which would have solved the problem.
13 Once people started going into closed session, he had
14 a chance to explain himself and talk with those people
15 and connect with those people. That would have solved
16 the problem. You wouldn't have had a massive crowd on
17 your hands anymore. You would have given him the
18 opportunity to respond, to explain that he was trying
19 to do it on behalf of anybody who might end up in
20 conflict with the police. Instead of doing that,
21 instead of following your own rules, once again I'm
22 going to repeat, you forced him to endure a multi-hour
23 beating, tar and feathering. He had to hear all the
24 nasty words. He had to feel his career crumbling, his
25 reputation crumbling. Then he had to go home to his

1 family.

2 I could go on and on, and I'm not going to.
3 I could go on and on about our evidence. I could go
4 on and on about the position that certain people took.
5 That certain people who are now going to decide his
6 fate were aggravating the situation, egging people on,
7 talking about how they were just disgusted by what
8 Dr. Metcalf had said because that's what the crowd
9 needed to hear to avoid coming after all of you.

10 And nobody up there is innocent. No one down
11 here is innocent, myself included. None of us are
12 perfect, but we all have a fundamental understanding
13 of what is fair and what is right. What happened here
14 was the cancel culture at its apex. They took a good
15 man who actually cares about minorities, who has
16 doubled the student population, who has hired 60
17 minorities to work in this school, and they destroyed
18 him. Which he was never given a chance, he was never
19 given a chance to get evidence to defend himself, he
20 was never given a chance at all.

21 I don't need to go through my book of
22 evidence because the burden isn't on Dr. Metcalf. The
23 burden is on the District, and the District didn't
24 meet its burden. It failed to authenticate those
25 documents. It failed to get what was needed to be

1 testified to into the record. These charges failed
2 because all those legs -- oh, he wrote the statement
3 by himself. Well, it turns out we had Mr. Ellsworth
4 to thank for that. And then there was the apology,
5 except you guys wrote that. And there was leg after
6 leg after leg that was not substantiated, was not put
7 into evidence. I don't need to talk about our
8 evidence because we don't have the burden of proof.
9 The District failed in putting forth a convincing case
10 that those legs of the charges justified Dr. Metcalf's
11 termination. They had a duty. They made choices.
12 They decided who they were going to put on the stand
13 and who they weren't. They chose not to put a lot of
14 important people on the stand to authenticate
15 documents, to provide the evidence that forms the
16 basis of these charges. We don't have to talk about
17 our evidence because the District didn't put any on,
18 at least not evidence that was authenticated, evidence
19 that could be relied on by this Board of Education in
20 firing its superintendent.

21 Now, do I think you're going to fire him?
22 You bet. My client is prepared for it. You don't
23 fire somebody in secret on June 5th, then quickly
24 realize that you have to go through some hoops, so you
25 go through the hoops and then come here and not fire

1 him. I expect him to be fired. He expects to be
2 fired because he hasn't gotten a fair shake from day
3 one. What changes today? Your lawyers did not put on
4 a case with evidence that you can base your decision
5 on to fire my client. That's what you need to
6 remember. And if you fire my client, then it's one
7 more stone being hurled at him, destroying him,
8 destroying his life, destroying his reputation,
9 destroying his career for making a statement that was
10 protected by the First Amendment. And it's going to
11 be one more block in a wall of unfairness that has
12 permeated this issue.

13 I'm begging you, do the right thing. I've
14 got three rules for my boys. I've got an eight and
15 ten year old boy and a three year old. Love your
16 mama; protect your mama no matter what; think before
17 you act, and do the right thing. Those are pretty
18 easy rules to live by. I'm asking you guys to live by
19 those rules. Do the right thing. Even if it hurts
20 you politically, even if it means that you're going to
21 be kicked off this Board, do the right and fair thing.
22 Dr. Metcalf hasn't had a single fair moment. I'm
23 begging you, do the right thing. I rest.

24 HEARING OFFICER BROOKOVER: Thank you, sir.
25 We're going to take a break, especially for the court

1 reporter and everybody else's needs. We'll come back
2 at 3:00.

3 (A short break was taken.)

4 HEARING OFFICER BROOKOVER: Ms. Swem, any
5 rebuttal?

6 MS. SWEM: No rebuttal.

7 HEARING OFFICER BROOKOVER: I'm going to
8 indicate for the record that the proofs are closed.

9 Ladies and gentlemen, I know in our
10 prehearing conference we really didn't particularly
11 discuss a closing. I'm sorry, Mr. Delaporte.
12 Mr. Delaporte had, I will call them modified and
13 revised exhibits of those minutes, and if you want to,
14 let's get them -- is Dr. Chapin around -- we'll get
15 them distributed to the Board. Thank you,
16 Mr. Delaporte. Thank you, Dr. Chapin.

17 Counsel, we didn't discuss this, but my
18 thought is based on your very thorough arguments today
19 that perhaps ten minutes would be sufficient time for
20 our closing, if necessary at all, is that agreeable?
21 Ms. Swem?

22 MS. SWEM: I agree to that.

23 HEARING OFFICER BROOKOVER: Mr. Delaporte?

24 MR. DELAPORTE: I'll use one minute and
25 somebody else can have the other nine.

1 HEARING OFFICER BROOKOVER: Okay. I
2 appreciate that, Mr. Delaporte, as long as you keep
3 taking care of that bee that keeps flying back and
4 forth between you and me.

5 MR. DELAPORTE: I'm trying to domesticate it.

6 HEARING OFFICER BROOKOVER: Pardon me?

7 MR. DELAPORTE: I'm trying to domesticate it.

8 HEARING OFFICER BROOKOVER: Thank you. I can
9 only hope you use the same advice with the bee that
10 you do with your kids and that is to tell the bee to
11 do the right thing.

12 So for the benefit of the Board, what we'll
13 do is each of the attorneys apparently has some
14 minimal verbiage left in them. So they are going to
15 do a brief closing. At that point I'll make some very
16 brief comments in terms of what the record is and some
17 suggestions to you in terms of how you may wish to
18 proceed. And at that point, this portion of the
19 hearing will be closed in order for you to go into
20 your deliberation.

21 So, Ms. Swem, closing statement please.

22 MS. SWEM: Thank you, Mr. Brookover. Board
23 members, you have heard throughout the day that this
24 is a hearing under the Loudermill standard, which is
25 the standard that applies to Dr. Metcalf's paragraph 7

1 termination hearing. Indeed, this is a
2 pre-termination hearing because you have not yet made
3 a decision. Loudermill requires charges, proffered
4 evidence in support of the charges and an opportunity
5 for Dr. Metcalf to respond. That is all that is
6 required at this stage of the proceedings.

7 Comment was made about the First Amendment
8 and the free speech clause. Indeed, it is a very
9 important part of our Constitution's Bill of Rights,
10 and I agree with Mr. Delaporte that Dr. Metcalf's
11 comment on Facebook were made as a private citizen
12 about a matter of public concern, but the inquiry does
13 not stop there. The inquiry under United States
14 Supreme Court standards in the Pickering, Connick and
15 Garcetti standards also tell us that we must look at
16 that speech and its impact on the public employer.
17 The seven of you as individual Board members elected
18 by the constituents of this School District are best
19 able to make that determination about the impact of
20 that speech on this School District.

21 Each of you sit today as elected members of
22 the Board and must decide whether the charges were
23 established by a preponderance of the evidence, which
24 typically means more likely than not.

25 Just cause. You heard Mr. Delaporte refer to

1 the seven factors, and that's from a very famous
2 arbitration decision written in an industrial
3 collective bargaining agreement context that was
4 issued by Arbitrator Carroll Daugherty many years ago.

5 That is not the only test for just cause.
6 Indeed, in a circumstance like this with essentially
7 the CEO of your District through his negotiated
8 individual contract, you're not held to the seven
9 factor standard of Arbitrator Daugherty's just cause
10 test. Indeed, as I stated in my opening, the Michigan
11 Supreme Court tells us that just cause is looked at on
12 a case-by-case basis.

13 The ultimate question for you is whether a
14 preponderance of the evidence establishes is it more
15 likely than not, can Brian Metcalf lead the
16 Grand Ledge Public Schools? Thank you.

17 HEARING OFFICER BROOKOVER: Mr. Delaporte
18 please.

19 MR. DELAPORTE: That was a bit of an
20 oversimplification of the just cause standard. The
21 arbitrator will be looking at those factors. There
22 are a lot of those factors missing. It doesn't matter
23 though because at the end of the day all that matters
24 are two things. One, the District made choices in how
25 they presented their case, and they failed to support

1 any leg of the charges. It's not whether he can then
2 properly continue as superintendent, it's whether you
3 have just cause because that's the standard that the
4 District decided to bring. They could have fired him
5 for any reason, but they are firing him for just cause
6 or allegedly firing him for just cause to save the
7 District a bunch of money. That's in his contract
8 that protects him from these kinds of things.

9 So, it's not about whether he can continue as
10 your superintendent, it's whether there's just cause
11 for all the charges they put together, misconduct and
12 all the rest of those, incompetency, et cetera. The
13 only problem is they brought the front of the train
14 but they forgot the rest of the cars behind it, those
15 that contain evidence that was authenticated, that
16 contain support for those charges. When one of your
17 charges is that he published this apology statement
18 and it turns out that that was dictated to him, that
19 leg kind of fails, and the problem is that all the
20 legs have failed. We went through them and I'm not
21 going to go through them again.

22 Number one, this isn't just firing him.
23 Frankly, you can do that for pretty much any reason.
24 It's firing him for just cause, which is the decision
25 that this District made to try to save some money when

1 they were busy throwing him under the bus. So it has
2 to be a preponderance of the evidence for just cause,
3 and just cause has standards. It's not just simply
4 whether he can continue as superintendent. That's an
5 arbitrary and capricious type of an argument.

6 The second point, and then I will cede the
7 rest of my time, he hasn't gotten a fair shake up to
8 this day. Do the right thing. Be a shining example
9 to your students and your community members. Care
10 about what's right and wrong and look deep within your
11 soul and try to decide whether the other side proved
12 their case. They didn't. Thank you.

13 HEARING OFFICER BROOKOVER: Thank you. At
14 this point I'm going to just summarize for the Board
15 what I consider to be the record before the hearing
16 officer.

17 You passed a Board motion on Monday,
18 September 14th. Essentially, prior to that you had
19 authorized me to be the hearing officer, and then on
20 the 14th you passed a motion authorizing me to rule on
21 procedural and evidentiary issues that arise.

22 As you are already aware from the submissions
23 by both attorneys, Dr. Metcalf has a contract of
24 employment and the provisions of that contract allow
25 him this hearing.

1 Now, I'm in a little bit of an awkward
2 position in terms of advising you of the next steps
3 only because probably most of you don't know my
4 long-time experience is in representing
5 superintendents of schools who get fired, but I also
6 had the experience of being on the East Lansing school
7 Board for several years. The point of this is after I
8 get through this context or what I consider the record
9 to be, I'm going to give you some suggestions about
10 how you want to proceed in terms of your
11 deliberations. Understand, I am not your attorney. I
12 don't know if your attorney has given you advice or
13 not. I'm not interested in that. But I want to give
14 you some suggestions just to give you some guidance as
15 to what you may want to do for the remainder of this
16 hearing.

17 So, you all passed this Board motion to have
18 hearing officer, the contract of employment. Then
19 again, I'm not talking about anything that hasn't
20 already been discussed. You have the general
21 allegations, termination charges against Dr. Metcalf,
22 which at least my copy looks like it was dated I think
23 August 20, and I'm going to get back to that in a
24 minute.

25 Then as a result of a prehearing conference,

1 telephone conference agreed to by the attorneys which
2 occurred earlier this month, we had a discussion in
3 which Dr. Metcalf's counsel quite properly raised some
4 issues with regard to the process and the rulings. A
5 briefing schedule was established, and I wrote a
6 written opinion on those issues and promulgated it to
7 the two attorneys on Saturday. That's not a document
8 you should necessarily have in your possession, but if
9 you do, that's fine.

10 In any event, so there were some preliminary
11 rulings. And then as you've heard, and I also asked
12 that both attorneys, who did exactly as I asked,
13 submit or exchange exhibits. You had seen a lot of
14 exhibits today. You heard me rule on those exhibits
15 procedurally in terms of what was admissible or not
16 admissible.

17 I have indicated to you before, but I'm going
18 to repeat it today that this kind of hearing under the
19 precedent that's been cited before, specifically
20 Loudermill, it is not necessary for any party to
21 present a witness and the parties can present their
22 case however they want to.

23 In this situation, the parties have each
24 chosen to present you with a number of exhibits which
25 you now have in your possession, and the attorneys

1 have made comment on the exhibits and, in addition,
2 Ms. Swem called a witness and Respondent's attorney
3 had the opportunity to cross-examine him.

4 So, the evidence that you have in front of
5 you is all the exhibits and the hearing today and the
6 statements that were made by the attorneys in support
7 of their exhibits and the testimony that you heard
8 today under oath. That is the record that you have.

9 Now, also I just want you to be aware of the
10 fact that again at my request both of the attorneys
11 filed a witness list that I previously indicated on
12 the record. I asked that they exchange witness lists,
13 but neither party had any obligation to call any
14 witnesses. It is for you to decide the evidence and
15 how significant or insignificant or insignificant it
16 is. That is for you to decide, and the evidence is
17 before you.

18 Now, turning to the charges, and just in the
19 manner of suggestion, nothing that requires you to do
20 that, I would suggest, as I believe Dr. Metcalf's
21 attorney has referred to in his statement, there's a
22 number of allegations in this six-page document which
23 refer to or are in support of the actual charges. The
24 actual charges are four and they are on page six.

25 Number one is a charge of misconduct. I'm

1 not going to read it to you. You can read it. You
2 should read it.

3 Number two is incompetence. I'm not going to
4 read it to you. You should read it.

5 Number three is inefficiency. I'm not going
6 to read it to you. You should read it.

7 Number four is any other just cause -
8 leadership incapacity. I'm not going to read it to
9 you. You should read it.

10 I suggest that as you deliberate this matter,
11 which, as far as I know, is an open session, correct,
12 Mr. Delaporte?

13 MR. DELAPORTE: Yes.

14 HEARING OFFICER BROOKOVER: An open session.
15 As you deliberate this matter, you think about
16 formulating a motion with regard to each of those four
17 charges. In other words, the motion, and I understand
18 you may have already received advice, but the motion
19 should deal with one charge at a time, four different
20 motions. Am I making myself clear?

21 With that, unless you have some questions, I
22 turn it over to you to deliberate in this matter as
23 you see fit.

24 I want to also say that if you complete your
25 deliberations today, we will go to those decisions and

1 we will -- those will be part of the hearing
2 transcript. I've arranged for the court reporter to
3 have a transcript ready. And at that point I'm
4 leaving, because there's no -- the hearing at that
5 point is done. So the court reporter and I will
6 leave, and then you will move on to your agenda item
7 in terms of public comment and the president will take
8 back the meeting. Is that understandable to
9 everybody?

10 I think the proofs are in and I now submit
11 this to the Board to deliberate with regard to the
12 charges against Mr. Metcalf.

13 MS. DUFORT: So, I was --

14 HEARING OFFICER BROOKOVER: The court
15 reporter is going to be taking down all of this.

16 COURT REPORTER: Can I move?

17 HEARING OFFICER BROOKOVER: You want to move
18 here? Okay.

19 (Off the record while the court reporter
20 relocates closer to the Board.)

21 HEARING OFFICER BROOKOVER: Let the record
22 reflect the Board has entered into open session at
23 3:20.

24 MS. DUFORT: I would like to suggest that the
25 Board take a few moments to read clearly over each one

1 of these charges, and I'm thinking if we address each
2 one independently that may be easier. Is there
3 agreement?

4 MR. SHIFLETT: Yes.

5 MS. DUFORT: Thank you. I'm assuming
6 everyone has had time to read the charges for number
7 one, misconduct. I'd like to open it up for any
8 discussion the Board may have.

9 MR. MCKENNON: Are we starting with the
10 misconduct being the actual statements?

11 MS. DUFORT: I'm looking at the definition
12 here. So our role, as I see it and understand it, is
13 that we need to determine if, in fact, that an
14 intentional and substantial disregard of the
15 employer's interests or the employee's duties and
16 obligations to his employer have occurred, and the
17 rest of the statement. So, the comments would be to
18 make determinations or questions, clarifications on
19 this statement and what we understand to be
20 misconduct.

21 MS. CLARK PIERSON: I'll start. I would say
22 paragraph one, Misconduct. States, In the light of
23 the District's Guiding Principles the superintendent's
24 essential leadership role in the District,
25 Dr. Metcalf's May 30, 2020 Facebook comments

1 constituted misconduct as defined by the Supreme Court
2 in the cited case, which is intentional and
3 substantial disregard of the employer's interests or
4 of the employee's duties and obligations to his
5 employer. His Facebook comments disregarded the
6 District's interests described in the Guiding
7 Principles, as well as duties and obligations to the
8 District to model behavior which is not antithetical
9 to the District's Guiding Principles.

10 Dr. Metcalf is -- and when we hire a
11 superintendent, we always note that the superintendent
12 is the face of the District. We expect him to be out
13 in the community and to establish contacts with many
14 stakeholders in the community. He is not just an
15 educator, and I believe that the evidence provided, a
16 preponderance of the evidence established that he
17 disregarded the leadership position which requires
18 something of a more measured public interface and,
19 therefore, I would move that there was a preponderance
20 of the evidence to find misconduct that would support
21 a charge of termination.

22 MR. SMITH: I'll add to this discussion.
23 First of all, obviously I think it goes without
24 stating, but I will, we don't take this matter and
25 today lightly in any sense. Understood that the

1 career is involved here and, in fact, several careers
2 are involved here as well as our entire District and
3 the community has been affected by this event.

4 So, as I view the role of superintendent,
5 regardless of which account is being used, you are the
6 superintendent of a school district 24 hours a day
7 regardless of First Amendment Constitutional rights.
8 The same is imposed upon me, and the Rules of
9 Professional Conduct apply to me 24 hours a day
10 whether I'm in the office, whether I'm serving a
11 client or not.

12 I will move on to these other charges. It is
13 unfortunate but their comments and effects have been
14 well described and have cost the District in its
15 reputation as well as time, resources and even some of
16 the feelings of safety and inclusion within our
17 District.

18 So, I agree with Ms. Clark Pierson that the
19 misconduct charge has been met in support of
20 termination.

21 MR. CWAYNA: Mr. Smith, is that a second?

22 MR. SMITH: Yes, take that as a second.

23 MS. DUFORT: We have a motion, and I do not
24 have language in front of me, but I would like to have
25 you, Ms. Pierson, repeat that so I can write it down

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verbatim so we know exactly what it is we're voting on.

MS. CLARK PIERSON: The motion is that I found a preponderance of the evidence to support the misconduct charge and to support termination.

MS. DUFORT: Thank you.

Mr. Brookover, certainly in your capacity as hearing officer, I'd like to ask if that motion is complete enough for our needs here today?

HEARING OFFICER BROOKOVER: Yes, it is.

MS. DUFORT: Thank you, sir.

The motion was made by Ms. Clark Pierson, supported by Mr. Smith, and I believe we need a roll call vote for this today since we are, in fact, doing this as a Zoom as well as live. I will go ahead and ask for that roll call vote. Mr. Cwayna.

MR. CWAYNA: Yes.

MS. DUFORT: Mr. McKennon.

MR. MCKENNON: Yes.

MS. DUFORT: Ms. Mulvenna.

MS. MULVENNA: Yes.

MS. DUFORT: Ms. Clark Pierson.

MS. CLARK PIERSON: Yes.

MS. DUFORT: Mr. Shiflett.

MR. SHIFLETT: Yes.

1 MS. DUFORT: Mr. Smith.

2 MR. SMITH: Yes.

3 MS. DUFORT: My vote is also a yes. Motion
4 passes 7-0.

5 We will now move on to the second charge,
6 that of incompetence. Again, I would like to give the
7 Board a minute to thoroughly reread this charge and
8 prepare for any comments, questions that you may have.

9 MS. CLARK PIERSON: Denise, maybe you could
10 read it while we're looking at it into the record.

11 MS. DUFORT: Certainly. Number two, charge
12 of incompetence states, "Dr. Metcalf's May 30th, 2020
13 Facebook comments were made in the midst of
14 significant racial tensions which continue to this
15 day. His comments reflect naive assumptions about
16 social media posts and their potential effects. It
17 was foreseeable that his public comments in this
18 charged written communication --"

19 MR. SMITH: Atmosphere.

20 MS. DUFORT: Excuse me? "Charged
21 atmosphere," thank you, "would spark outrage and bring
22 negative publicity to the District. Dr. Metcalf's
23 June 1, 2020 written communication to parents and GLHS
24 students further reflects such incompetence in a
25 failed attempt to justify his Facebook comments

1 without apology or acknowledgement of the pain he
2 inflicted, further exacerbating the situation."

3 Comments from the Board.

4 MR. SHIFLETT: I think it's worth noting this
5 is the one that I felt the strongest since the charges
6 were drafted --

7 COURT REPORTER: Can you put your microphone
8 closer?

9 MR. SHIFLETT: -- to wander to the middle of
10 the discussion happening nationally and make comments
11 of that nature I think shows a lack of understanding
12 of the situation, of the community and of the
13 prevailing beliefs on racial equality, and that really
14 made me have genuine concerns about Dr. Metcalf's
15 ability to move forward with our District. This was
16 the most strong charge in my mind. I don't know how
17 everybody felt.

18 MS. CLARK PIERSON: I would agree with you on
19 that strong charge, and it goes directly to the
20 ability to lead. You may have some people that agree
21 with you. You may have some people that don't agree
22 with you on the basic statement that you made. I
23 personally didn't agree with his statement. But
24 regardless of that, it became a flash point in the
25 community, and it's the ability to lead this entire

1 community that we have to have from the
2 superintendent, and I believe that this self-inflicted
3 wound prevents him from being able to competently lead
4 our District and, therefore, I move that a
5 preponderance of the evidence supports the charge of
6 incompetence and would support, and it supports
7 termination of Dr. Metcalf.

8 MR. SHIFLETT: Support.

9 MS. DUFORT: We had a motion by Ms. Clark
10 Pierson, support by Mr. Shiflett. And any further
11 comments by any Board members before a roll call vote?
12 Hearing none.

13 MR. SMITH: Would you please confirm again
14 with the hearing officer that is an adequate motion?

15 HEARING OFFICER BROOKOVER: I believe it is.

16 MS. DUFORT: Thank you, Mr. Brookover.

17 Again, we shall do a roll call vote, and I
18 will go ahead and do it in the same order starting at
19 the end. Mr. Cwayna.

20 MR. CWAYNA: Yes.

21 MS. DUFORT: Mr. McKennon.

22 MR. MCKENNON: Yes.

23 MS. DUFORT: Ms. Mulvenna.

24 MS. MULVENNA: Yes.

25 MS. DUFORT: Ms. Clark Pierson.

1 MS. CLARK PIERSON: Yes.

2 MS. DUFORT: Mr. Shiflett.

3 MR. SHIFLETT: Yes.

4 MS. DUFORT: Mr. Smith.

5 MR. SMITH: Yes.

6 MS. DUFORT: My vote is also a yes. Motion
7 passes 7-0.

8 Moving on to the third charge which is
9 inefficiency, and I will go ahead and read this out
10 loud while the Board goes ahead and reads that for
11 themselves.

12 "The consequences of Dr. Metcalf's May 30,
13 2020 Facebook comments have been staggering, bringing
14 negative publicity to the District, creating strife
15 amongst District stakeholders, and resulting in
16 expenditure of District funds for public relations
17 assistance and legal counsel. Board members and
18 administrators spent significant time responding to
19 concerns from District stakeholders with additional
20 meetings, communications, and conversations about
21 Dr. Metcalf's Facebook comments and their detrimental
22 impacts throughout the District and community."

23 MS. MULVENNA: I would like to speak to this.

24 COURT REPORTER: You have to use your
25 microphone. If you can speak right into it, that's

1 helpful.

2 MS. MULVENNA: First of all, the negative
3 publicity this has brought to our District, our
4 families and a sense of the negative publicity this
5 has brought --

6 COURT REPORTER: Ma'am, you've got to get
7 closer to the microphone. I'm sorry. Your voice
8 completely loses.

9 MS. MULVENNA: -- negative publicity this has
10 brought to our District, being called a racist for
11 hours on end by multiple people. Whether they were in
12 our community or out of our community, a lot of those
13 people were our alumni, and I was very proud of them
14 for taking a position.

15 The other part is what this has done as far
16 as consuming time for administrators, Board members.
17 I had actually 842 e-mails that we received within the
18 first week. The e-mails are still coming in that need
19 to be addressed and answered from the community, and
20 it's really put us, especially with the pandemic, it's
21 really put us in a bad light. People think we're more
22 concerned on this, spending more money and time on
23 this issue than we are on educating our children. And
24 the legal fees that have been incurred and will
25 continue to be incurred, so I would say yes for

1 inefficiency.

2 MR. SMITH: Are you making a motion, Kim?

3 MS. MULVENNA: Yes, I would make a motion.

4 MS. CLARK PIERSON: You find a preponderance
5 of the evidence supports the charge of inefficiency?

6 MS. MULVENNA: Yes, thank you.

7 MR. SMITH: Support.

8 MS. CLARK PIERSON: I would support this
9 charge as well. I've been on the Board since I think
10 2003, and I have never had the amount of community
11 response. And while I did respond to all of them or
12 tried to, it was, this was a community that was
13 hurting in response to a genuine pain from this, and
14 it was consuming everyone in a time, as Ms. Mulvenna
15 said, we are in an extraordinary period with the Covid
16 virus as well, and this really prevented us from
17 putting all of our resources to our kids where we
18 needed it most and was an immense inefficiency for
19 this District to be dealing with it. Therefore, I
20 support the motion or I concur with the motion and
21 support.

22 HEARING OFFICER BROOKOVER: Can somebody
23 repeat the motion for the record?

24 MS. CLARK PIERSON: The motion was a
25 preponderance of the evidence supports the charge

1 number three of inefficiency and supports the
2 termination of Dr. Metcalf.
3 HEARING OFFICER BROOKOVER: That's moved by
4 Pierson?
5 MS. MULVENNA: Mulvenna.
6 MS. CLARK PIERSON: I'm just the village
7 explainer.
8 MS. DUFORT: Moved by Mulvenna and supported
9 by Smith.
10 Any other comment on the part of the Board?
11 Roll call vote. Mr. Cwayna.
12 MR. CWAYNA: Yes.
13 MS. DUFORT: Mr. McKennon.
14 MR. MCKENNON: Yes.
15 MS. DUFORT: Ms. Mulvenna.
16 MS. MULVENNA: Yes.
17 MS. DUFORT: Ms. Clark Pierson
18 MS. CLARK PIERSON: Yes.
19 MS. DUFORT: Mr. Shiflett.
20 MR. SHIFLETT: Yes.
21 MS. DUFORT: Mr. Smith.
22 MR. SMITH: Yes.
23 MS. DUFORT: I vote yes as well. Motion
24 passes 7-0.
25 The fourth and final charge: "Any other just

1 cause - leadership incapacity. Dr. Metcalf's
2 employment contract permits termination 'for any other
3 Just Cause'. The ensuing community turmoil caused by
4 Dr. Metcalf's May 30, 2020 Facebook comments have
5 rendered him incapable of leading the District as its
6 superintendent. This fact has been publicly
7 recognized by organizations and individuals throughout
8 the community, who condemned Dr. Metcalf's conduct and
9 called for his removal, including: Grand Ledge area
10 elected officials, the MASA Board of Directors, the
11 Grand Ledge Education Association and individual
12 District stakeholders. The breadth and intensity of
13 stakeholder response demonstrates that his apology and
14 offer to participate in sensitivity training after the
15 failed June 1, 2020 'double down' communication,
16 cannot rehabilitation Dr. Metcalf's ability to lead
17 the Grand Ledge Public Schools as its superintendent.

18 MR. SMITH: I'll start here with some
19 discussion. I just feel like it's part of my duty. I
20 heard about the post from uncountable sources. So
21 even the likes today that a child had reposted a post
22 that was subsequently taken down.

23 This post and comments and questions and
24 communications regarding this post were in the
25 hundreds that included snapshots of the post itself.

1 So this is the cause, the incapacity that hit home for
2 me that has since before June 5th. When this
3 happened, it had become apparent and it's still
4 apparent because we're receiving communications I'm
5 sure yet today even on this matter that until this is
6 resolved, and if Dr. Metcalf remains superintendent we
7 are at a standstill with the operation of our
8 District. It just can't happen. This isn't an
9 accusation. This is nothing other than Dr. Metcalf
10 has become incapable in this position at this time in
11 this District, and we have to take action to move the
12 District forward.

13 So, I am making the motion that there is a
14 preponderance of the evidence supporting charge number
15 4, the just cause - leadership incapacity, that
16 supports termination of Dr. Brian Metcalf as
17 superintendent of Grand Ledge Public Schools.

18 MR. SHIFLETT: Support. I want to know that
19 while it cannot rehabilitate the ability to lead, I
20 don't really believe there's been any effort to do so,
21 you know, a couple of on-line courses at Cornell.
22 There still hasn't been any responsibility taken for
23 how the statements have affected the community as a
24 whole. I just don't think that there's any
25 opportunity at this point for a rehabilitation to lead

1 the District as superintendent, so I support your
2 motion.

3 MS. CLARK PIERSON: I also would like to
4 comment that as to that motion, to the extent that it
5 is meant to capture all of item number four and any
6 other just cause, we would strike out the Grand Ledge
7 Chamber of Commerce Board. That evidence was removed.
8 And the last sentence on this page says, The breadth
9 and intensity of the stakeholder response demonstrates
10 his apology and offer to participate in sensitivity
11 training, I won't go on to the rest of the sentence, I
12 just want to point out it includes the words, "his
13 apology", but his attorney has stated it was not his
14 apology, that it was the one requested by the Board
15 that he felt forced to make, that, in fact, he has
16 made no personal apology in this situation.

17 So I am supporting that as long as the record
18 is clear that the Grand Ledge Chamber of Commerce must
19 be struck, and that for me personally it does not
20 include that there was an apology since he is denying
21 or the attorney presented it was not his own.

22 MR. CWAYNA: If I could weigh in here. On
23 this record we have heard no direct testimony by any
24 witness that that apology, for lack of a better term,
25 was forced or dictated.

1 MS. CLARK PIERSON: That's true. It's just a
2 representation from his counsel.

3 MR. SMITH: President DuFort purposely
4 omitted Grand Ledge Chamber of Commerce from her
5 reading of the motion.

6 MS. CLARK PIERSON: I just want to make sure
7 it is in writing.

8 MR. MCKENNON: This is the charge that I felt
9 most strongly about, and in listening today, listening
10 to Mr. Delaporte talk about Dr. Metcalf and what he
11 went through, and I think all of us can understand
12 that. I think all of us in a sense with the Board
13 included have been through a lot, but this is a series
14 of events started by Dr. Metcalf that I believe, as
15 Mr. Shiflett said, I don't think he realizes the
16 effect he's had with his words on other people yet,
17 especially this Board, and I think it has
18 significantly instilled in us, getting in the way of
19 his ability to lead this District. So this one for
20 me, I believe this is exactly what we have been
21 talking about the whole time. Based on this series of
22 events, Dr. Metcalf is not able to continue to lead
23 this District.

24 MS. MULVENNA: Can I just add, Brian, we
25 liked you. We've always liked you, okay. But the

1 thing is this incident and these incidents that
2 happened after that, it's your inability to provide
3 leadership to this District, that's what it has done.
4 Okay. So, I don't want to -- all the things that were
5 mentioned, that's what's been so difficult about this
6 and how quickly this happened.

7 MR. DELAPORTE: Hearing Officer, if they want
8 to pontificate against my client, I'd like to respond.

9 HEARING OFFICER BROOKOVER: We are not
10 responding to the school Board. The school Board is
11 deliberating.

12 MR. DELAPORTE: Oh, that's right. God forbid
13 the truth come out.

14 MR. SHIFLETT: There will be public comments.

15 MS. DUFORT: Any other comments from the
16 Board at this time?

17 MS. MULVENNA: I think I was done, yes, thank
18 you.

19 MS. DUFORT: Again, I would like to check in
20 with our hearing officer, make sure we have adequate
21 language in our motion.

22 HEARING OFFICER BROOKOVER: As I understood
23 the motion, yes, I believe you do.

24 MS. DUFORT: Thank you, sir.

25 We have a motion made by Mr. Smith and

1 seconded by Mr. Shiflett. We are ready for a roll
2 call vote. Mr. Cwayna.

3 MR. CWAYNA: Yes.

4 MS. DUFORT: Mr. McKennon.

5 MR. MCKENNON: Yes.

6 MS. DUFORT: Ms. Mulvenna.

7 MS. MULVENNA: Yes.

8 MS. DUFORT: Ms. Clark Pierson.

9 MS. CLARK PIERSON: Yes.

10 MS. DUFORT: Mr. Shiflett.

11 MR. SHIFLETT: Yes.

12 MS. DUFORT: Mr. Smith.

13 MR. SMITH: Yes.

14 MS. DUFORT: My vote is also yes. Motion
15 passed 7-0.

16 At this time I believe that concludes our
17 Board deliberations.

18 HEARING OFFICER BROOKOVER: Well, I think for
19 the purposes of the hearing if it's your intent to do
20 this, I think you need to make a motion specifically,
21 again if this is your intent, to terminate Dr. Metcalf
22 under the, under the contract for the reasons set
23 forth on the basis of the charges you have just
24 discussed and voted on. In other words, you voted on
25 the charges, you approved the charges, but I don't

1 think it's intrinsic that based on those charges you
2 are now going to decide to terminate.

3 MS. DUFORT: Thank you for that
4 clarification. Bring it up to the Board to find a
5 motion.

6 MS. CLARK PIERSON: I move Dr. Metcalf's
7 employment with the Grand Ledge Public Schools be
8 terminated based on the charges and findings of the
9 Board on those four charges.

10 MR. SHIFLETT: Support.

11 MS. DUFORT: Motion by Ms. Clark Pierson,
12 supported by Mr. Shiflett. Conversation or comments
13 by the Board?

14 MS. CLARK PIERSON: I'll just say it's a sad
15 day.

16 MS. DUFORT: We will proceed with the roll
17 call vote. Mr. Cwayna.

18 MR. CWAYNA: Yes.

19 MS. DUFORT: Mr. McKennon.

20 MR. MCKENNON: Yes.

21 MS. DUFORT: Ms. Mulvenna.

22 MS. MULVENNA: Yes.

23 MS. DUFORT: Ms. Clark Pierson.

24 MS. CLARK PIERSON: Yes.

25 MS. DUFORT: Mr. Shiflett.

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MR. SHIFLETT: Yes.

MS. DUFORT: Ms. Smith.

MR. SMITH: Yes.

MS. DUFORT: My vote is also a yes. Motion passes 7-0.

HEARING OFFICER BROOKOVER: At this point in time, I declare the hearing with regard to the contract of Dr. Brian Metcalf due process hearing to be closed, and I will exit your facility. Thank you very much.

MS. DUFORT: Thank you. We appreciate your support and willingness to serve in the capacity of hearing officer today.

HEARING OFFICER BROOKOVER: The record should show that the hearing closes at 3:50 p.m.

cp 3

(Hearing concluded at 3:50 p.m.)

