

CONFIDENTIAL
REPORT OF THE
SPECIAL INDEPENDENT INVESTIGATOR

**BOARD OF EDUCATION
BUFFALO PUBLIC SCHOOLS
BUFFALO CITY SCHOOL DISTRICT**

**CONFIDENTIAL
REPORT OF THE
SPECIAL INDEPENDENT INVESTIGATOR**

This report is intended for the confidential use of the Members of the Board of Education and is not intended for public dissemination.

Prepared by:

**PHILLIPS LYTTLE LLP
David L. Edmunds, Jr., Esq.
Allison P. Gioia, Esq.**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	INVESTIGATION PROCEDURE	2
III.	PERSONS INTERVIEWED	4
IV.	EXECUTIVE SUMMARY	6
V.	SUMMARY OF CRITICAL FACTS DETERMINED	8
VI.	STATEMENT OF FACTS	12
A.	Suspension of [REDACTED]	12
B.	Dismissal of Michelle Stiles	48
VII.	DISCUSSION OF ISSUES	80
A.	What provisions of the Board's Code of Conduct were violated by the student and when?	80
B.	(1) What was the appropriate measure of discipline for the identified misbehavior and violations of the Board's Code of Conduct?	86
B.	(2) Was the suspension of the McKinley High School student appropriate in relation/comparison to violations of the same nature during this same time period?	86
C.	(1) Was the suspension of the McKinley High School student made in accordance with all applicable New York State Law, including due process rights?	91
C.	(2) Was the suspension of the McKinley High School student made in accordance with the protections afforded by the United States or New York State Constitution?	91
D.	Was the suspension of the McKinley High School Student made in accordance with the Board's policies and procedures?	101
E.	Was the student's First Amendment right to free speech restricted?	105
VIII.	CONCLUSION	108

I. INTRODUCTION

The Board of Education of the Buffalo Public Schools formally established the position of Special Independent Investigator to review the facts leading up to, arising from, surrounding and resulting from the seven-week suspension of a senior student enrolled at McKinley High School. The Board determined that it sought a full and comprehensive investigation of both the suspension and all collateral incidents, including, but not limited to, the dismissal of the volunteer assistant girls' basketball coach at McKinley High School.

The primary goal of this investigation was to obtain the information necessary to determine the critical facts and circumstances, in detail, surrounding the suspension of the student and the dismissal of the volunteer and to resolve questions regarding the identity of Buffalo School District employees involved in the decision making processes with respect to these two matters and the nature and the extent of the involvement of these individuals. The objective of the investigation and report was to provide the Board of Education with relevant and reliable information in a succinct, analytical narrative format for evaluation and appropriate decision-making.

Over a period of several weeks, we reviewed numerous documents and interviewed twenty-eight (28) individuals. We believe that, to the extent possible, we have captured the events surrounding these two occurrences to meet the goals and objectives of this investigation.

II. INVESTIGATION PROCEDURE

This investigation consisted of the gathering of available, relevant and reliable information. The investigation and reporting processes were at all times handled in an impartial and fair manner to obtain pertinent and relevant factual information, pursuant to the goals and objectives of the investigation. The source of all relevant information is reported to the extent possible.

At the outset of the investigation, procedures were identified and employed consistently and fairly during the course of the investigation. It was determined that to insure the impartiality of the investigation, all interviews would be held at the offices of Phillips Lytle LLP. This information was provided in writing to all persons who participated in the investigation. The procedures included the right of any person who appeared as a witness before the investigator to be accompanied by counsel or a representative of his or her choice.

The investigation necessarily involved: a) gathering the facts; b) determining the merits of the allegations; c) maintaining confidentiality to the greatest extent possible; d) respecting and preserving the reputations of individuals, district staff and the Board of Education; e) avoiding liability as a result of the investigation, if possible; f) protecting students, faculty, staff and other individuals against false and injurious allegations; g) protecting from reprisal, if possible, individuals who in good faith brought forward evidence; and h) ensuring that all allegations are reviewed fairly and accurately; and i) considering proper remedial action if requested by the Board of Education.

Twenty-eight (28) individuals were interviewed as part of this investigation. All persons agreed to attend the interviews at the offices of Phillips Lytle LLP, with the exception of McKinley

High School Principal Crystal Barton. On three separate occasions, Mrs. Barton was invited to attend an interview and declined to do so each time through her attorney. We deeply regret that we were unable to include her as part of this process. It is noted, however, that during this time, Mrs. Barton gave an interview to the Buffalo Challenger and to WGRZ-TV. Accordingly, statements made and conclusions reached in this report with respect to Mrs. Barton that are unrebutted should be deemed true for purposes of this investigation.

III. PERSONS INTERVIEWED

Catherine Battaglia, Ph.D., Buffalo Public Schools, Community Superintendent

[REDACTED]

Diana Caruana, Guidance Counselor, McKinley High School

Natosha Cummings-Price, Head Women's Basketball Coach, Erie Community College

Susan Eager, Buffalo Public Schools, Director of Plant Operations

Kelli Daniels, Buffalo Public Schools, Supervisor (Hearing Officer) Pupil Personnel Services

James Daye, Teacher and Coach, McKinley High School

Will Kereztes, Buffalo Public Schools, Associate Superintendent

[REDACTED], Senior Student, McKinley High School

[REDACTED]

Eric Martin, President, McKinley High School Parent Teacher Organization

Fatima Morrell, Principal-on-Assignment, McKinley High School

Monica Peoples, Ph.D., Assistant Superintendent, Student Support Services and Compliance

Charles Palumbo, Security Officer, McKinley High School

Emlyn Rivera, Buffalo Board of Education, Senior Stenographer

Phillip Rumore, President, Buffalo Teachers Federation

Michael Sorrentino, Teacher and Coach, McKinley High School

Debra Stanczyk, Teacher and Coach, Bennett High School

Bertha Steckmeyer, Buffalo Board of Education, Senior Stenographer

Michelle Stiles, Former Volunteer Assistant Girls' Basketball Coach, McKinley High School

David B. Thomas, Buffalo Public School, Director of Athletics, Physical Education and Health

Eugene Thomas, Hearing Advocate, Youth Advocacy Program, Buffalo Federation of
Neighborhood Centers, Inc.

[REDACTED]

Noel Wilhelm, Chief Custodian Engineer, McKinley High School

James A. Williams, Ed.D., Superintendent, Buffalo Public Schools

[REDACTED]

McKinley High School Students [REDACTED]

IV. EXECUTIVE SUMMARY

1. **What provisions of the Board's Code of Conduct were violated by the student and when?**

We have determined that the student violated two specific provisions of the District's Code of Conduct. During a Superintendent's hearing, she admitted use of a cell phone while in school; use of a cell phone in school is prohibited at all times. In addition, she admitted leaving a class and the school building without permission; this behavior constitutes insubordination.

2. **What was the appropriate measure of discipline for the identified misbehavior and violations of the Board's Code of Conduct?**

Dr. Monica Peoples, Assistant Superintendent for Student Support Services has submitted that the appropriate measure of discipline for the identified violations of the Code of Conduct was a suspension of a period of five to fifteen days.

Was the suspension of the McKinley High School student appropriate in relation/comparison to violations of the same nature during the same a time period?

We have determined that the suspension was not appropriate in relation/comparison to violations of the same nature during a similar time period. Indeed, this suspension was excessive.

3. **Was the suspension of the McKinley High School student made in accordance with all applicable New York State Law, including due process rights?**

Was the suspension of the McKinley High School student made in accordance with protections afforded by the United States or New York State Constitution?

We have concluded that the suspension process as applied to this student failed to comply with the requirements of the New York Education Law and to afford her the minimum protections of due process.

4. **Was the suspension of the McKinley High School student made in accordance with all the Board's policies and procedures?**

We have determined that suspension process as applied to this student did not proceed in a manner that was in compliance with the Board's policies and procedures.

5. **Was the student's First Amendment right to free speech improperly restricted?**

There is a sufficient basis to conclude that the unilateral removal of the student's name from the speaker's list for the December 12, 2007 Board of Education meeting was improper.

V. SUMMARY OF CRITICAL FACTS DETERMINED

- (a) What are the facts and circumstances underlying the initial suspension of the student?

On December 11, 2007, between 11:30 a.m. and noon, [REDACTED]

[REDACTED] used a cell phone in the girls' gym bathroom to contact the Board of Education office to request to have their names placed on the list of speakers for the Board's December 12, 2007 meeting. Almost immediately, McKinley Principal Crystal Barton was informed that such phone calls were made. During the afternoon, various disciplinary measures were initiated against several, but not all of the girls who called the Board office. It was also determined that [REDACTED] left her class and the building without permission on December 11, 2007.

- (b) What were the actual terms of the initial suspension of the student?

On December 12, 2007, Fatima Morrell, Principal-on-Assignment to McKinley, held a pre-suspension conference with [REDACTED] advise her that effective December 13, 2007, she would be suspended for a period not to exceed five days for cell phone use and for leaving her class and the building without permission. A parent conference was scheduled for December 20, 2007. However, this suspension was never implemented due to another incident of misconduct that occurred during the pre-suspension conference.

- (c) Was there a subsequent suspension and, if so, what were the facts and circumstances underlying the subsequent suspension?

On December 13, 2007, Mrs. Morrell and McKinley Principal Crystal Barton agreed that it was necessary to withdraw the "informal suspension" and to formally suspend [REDACTED] effective the same date and to request the Superintendent to conduct a hearing to determine the

appropriate penalty for the alleged misbehavior. Thus, there were neither two suspensions nor a subsequent suspension.

(d) What were the actual terms of the subsequent suspension of the student?

The McKinley administration did not impose a subsequent suspension.

(e) Were the procedures for suspension of a student for a period of five days or less followed?

The basic procedures for commencing a suspension of a student for a period of five days or less were followed by the school administration.

(f) Were the procedures for suspension of a student for a period in excess of five days followed?

The provisions of the State Education Law and the Board's Code of Conduct were not followed as required in the suspension process as applied to this student.

(g) What Board Members and/or employees of the Board were involved in any and all aspects of the suspension?

No members of the Board of Education were involved in any aspect of the suspension process. The employees of the School District who were involved are: Crystal Barton, Fatima Morrell, Kelli Daniels and Dr. Monica Peoples.

(h) What Board Members and/or employees of the Board ratified the actions of subordinate School District employees?

No members of the Board of Education were involved with the actions of employees of the school district with respect to this suspension process. With the exception of directions given to clerical staff, no actions of any employee of the school district were ratified or approved by any other employee of the District or Member of the Board.

- (i) **Did the Board, by its employees, interfere, intentionally or unintentionally, with the suspension process and/or the student's right to appeal the suspension?**

On December 21, 2007, McKinley Principal Crystal Barton called Hearing Officer Kelli Daniels to discuss the suspension hearing of [REDACTED] and the desired penalty. Specifically, Mrs. Barton expressly stated that she did not want [REDACTED] returned to McKinley. In rendering her decision, Dr. Peoples was in fact influenced by Mrs. Barton's direction to Ms. Daniels that she did not want [REDACTED] returned to McKinley. On or after January 7, 2008, [REDACTED] contacted Assistant Superintendent Monica Peoples to determine the basis for the suspension imposed by her. During the conference [REDACTED] was advised that an appeal of the decision could result in the principal initiating a request for an involuntary transfer to the Academy School. This caution by Dr. Peoples was viewed by [REDACTED] as discouragement from pursuing an appeal.

- (j) **Did the Board comply with its responsibilities to the student during the suspension?**

Pursuant to the decision of Assistant Superintendent Monica Peoples [REDACTED] was suspended and on home instruction from December 13, 2007 to February 15, 2008. During this time, [REDACTED] was provided with minimal work from the Guidance Department's Home Instruction service.

- (k) **Did the Board, by its employees, interfere intentionally or unintentionally with the student's, and other students similarly situated, access/attempts to speak with Board Members?**

On December 11, 2007, between 11:30 a.m. and noon, [REDACTED] [REDACTED] used a cell phone in the girls' gym bathroom to contact the Board of Education office to request to have their names placed on the list of

speakers for the Board's December 12, 2007 meeting. Shortly thereafter, Principal Crystal Barton became aware of the phone calls. She contacted the Board office and directed the stenographer to remove the names of each of the girls from the list. Mrs. Barton was advised that the names of the students could not be removed from the speaker's list without the consent of the parents. Mrs. Barton telephoned the Board office a second time to inform the stenographer that the girls' parents either did not want them to speak or that they did not have parental permission to speak at the Board meeting. Based on this representation, the stenographer removed the names from the December 12, 2007 speaker's list. [REDACTED]

[REDACTED] and at least one other student's parent were not contacted by anyone to determine whether the children had permission to speak or whether the parent/guardian wanted them to speak to the Board.

VI. STATEMENT OF FACTS

A. The Suspension of [REDACTED]

1. Background - [REDACTED]

In the fall of 2007 [REDACTED] was a senior student at McKinley, where she had been enrolled since her freshman year. She previously attended [REDACTED] from pre-kindergarten through 8th grade [REDACTED] who serves as her guardian and primary caregiver. During the 2007-2008 basketball season, [REDACTED] was in her third year as a member of the girls' basketball team coached by Michael Sorrentino, who is also a physical education and health instructor at McKinley. [REDACTED] is also a member of the soccer and softball teams. In October 2007, [REDACTED] carried a [REDACTED] cumulative grade point average and was ranked [REDACTED] in her class. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On or about November 1, 2007 [REDACTED] was approved to participate in the Early Release Program; this allowed her to leave school daily at 1:30 p.m. It is anticipated that [REDACTED] will graduate from McKinley in June 2008. In October 2007, [REDACTED]

[REDACTED]

[REDACTED]

2. Background - Michelle Stiles¹

Michelle Stiles is a graduate of the State University of New York at Buffalo ("UB"), where she was a member of the women's varsity basketball team. She served as volunteer coach at UB for

¹ A more complete discussion of Michelle Stiles' background and relationship with the McKinley girls' basketball team can be found in Section VII.B beginning at page 18.

three years and as a volunteer coach at Pennsylvania State University. She is the Director of Queen City Classics, a non-profit AAU basketball program for girls in Western New York. She is employed as a physical therapist.

In December 2004, Ms. Stiles was attending a McKinley versus Immaculata Academy game at Immaculata Academy. During the game, Ms. Stiles approached Mr. Sorrentino and offered to share with him an offensive play for use in the game; the play was indeed used successfully during the game. Following the game, Mr. Sorrentino invited Ms. Stiles to attend a practice at McKinley and to provide some additional strategy to his team as a volunteer. Beginning with the 2004-2005 basketball season and continuing through the beginning of the 2007-2008 basketball season, Ms. Stiles assisted Mr. Sorrentino as a volunteer. Basketball practice for the McKinley girls' team for the 2007-2008 season began on November 1, 2007.

As will be discussed in greater detail below, at various times throughout 2005, 2006 and 2007, Ms. Stiles made arrangements with Susan Eager, Buffalo Public Schools, Director of Plant Operations to use the McKinley gymnasium in connection with her AAU program, Queen City Classics. Suddenly, on November 30, 2007, Ms. Eager advised Ms. Stiles by telephone message, e-mail and by letter that the District was cancelling Queen City Classics' use of the McKinley gymnasium "effective immediately" due to a conflict with another Board of Education program at McKinley. At all times relevant to this matter, Mr. Sorrentino was not involved with Ms. Stiles' Queen City Classics AAU basketball program. Mr. Sorrentino was, however, aware that Ms. Stiles ran the Queen City Classics AAU program and that certain present and former

McKinley girls' basketball players either played for or assisted Ms. Stiles with this program. A more complete discussion of Mr. Sorrentino's familiarity with Queen City Classics follows.

3. Background - McKinley High School

McKinley High School has a student enrollment of approximately 1,200 students in grades 9-12, with a faculty of approximately 70 teachers. The executive administration consists of Principal Crystal Barton; Principal-on-Assignment, Fatima Morrell, Assistant Principals Gary Tydus and Carlos Villarroel. McKinley High School enjoys a reputation in this community as a one of the district's most popular choices among both parents and students for assignment. In addition, McKinley is thought of as a school that prepares students for employment through it's well known vocational programs.

4. Dismissal of Michelle Stiles²

On or about November 13, 2007, Mrs. Barton met with David Thomas, Director of Athletics, Physical Education and Health to review the McKinley athletic program and Mr. Sorrentino's role as the head coach of the McKinley girls' basketball team. During the meeting, Michelle Stiles and her relationship with the McKinley girls' basketball team was discussed. Mrs. Barton reported to Mr. Thomas that she had learned that Mr. Sorrentino was not present in the gymnasium when Ms. Stiles' AAU programs were taking place, that her programs were open to non-McKinley students and that Mr. Sorrentino he had effectively turned the McKinley girls' basketball program over to Ms. Stiles.

² A more complete discussion of the facts relating to the dismissal of Michelle Stiles can be found at Section VIB beginning at page 48.

During this meeting, Mr. Thomas shared information about Ms. Stiles with Mrs. Barton, with respect to her involvement in AAU programs and incidents with officials at Buffalo Public School basketball games. Mr. Thomas also shared his continued dissatisfaction with the fact that Mr. Sorrentino had let Ms. Stiles take over the team and that Mr. Sorrentino was not meeting his responsibilities as the paid coach. For an inexplicable reason, James Daye, coach of the McKinley boys' basketball team was present for part of this meeting. Mr. Daye reported to Mrs. Barton and Mr. Thomas that Ms. Stiles was discrediting his reputation by making allegations that he was involved in a relationship with the relative of a member of the girls' basketball team. At the conclusion of the meeting, Mrs. Barton determined that Ms. Stiles could no longer serve as a volunteer at the school.

Mrs. Barton then invited Mr. Sorrentino into the meeting and informed him that Ms. Stiles would no longer be allowed to volunteer for the 2007-2008 basketball season. Mrs. Barton did not give Mr. Sorrentino a reason for her decision. It was understood that Mr. Sorrentino would contact Ms. Stiles and advise her of Mrs. Barton's decision. Mr. Sorrentino then contacted Ms. Stiles by telephone to inform her of Mrs. Barton's decision.

5. The Team's Response to Ms. Stiles' Dismissal

On the same afternoon that Ms. Stiles learned from Mr. Sorrentino that she had been dismissed, Ms. Stiles contacted [REDACTED] a therapy patient, to inform her of the occurrence. [REDACTED] in turn contacted [REDACTED] on [REDACTED] cell phone and shared this information with [REDACTED] who was in the school locker room preparing for practice. [REDACTED] immediately informed her teammates of this event. Prior to the start of practice, Mr. Sorrentino

met with the team to discuss the dismissal of Ms. Stiles. Many of the girls were upset because he could not give them a reason for Mrs. Barton's decision. In the following days, several members of the team organized an informal strike and did not attend practice for approximately five days in protest of Ms. Stiles' dismissal.

On November 14, 2007, [REDACTED] wrote a letter on her home computer, with the approval of her grandmother, addressed "To Whom it may concern" on behalf of the girls' basketball team indicating that on November 13, 2007, the girls learned that Ms. Stiles had been dismissed. The letter discussed Ms. Stiles' involvement with the team and requested help in having Ms. Stiles reinstated. The letter indicated that it was from [REDACTED] and three other members of the team. Mrs. Jones subsequently informed [REDACTED] that she could request permission to speak at a Board of Education meeting about how Ms. Stiles' dismissal has affected the team.

6. The Use of the Cell Phone

As mentioned briefly above, [REDACTED], had discussed with [REDACTED] in response to [REDACTED] inquiry about what the team could do to try and get Ms. Stiles back, that [REDACTED] and her teammates could speak at a Board of Education meeting. [REDACTED] had also learned from Ms. Stiles and from a former McKinley student and teammate, [REDACTED] that she could speak to the Board of Education. [REDACTED] was told that she and others who wished to speak at the Board meeting needed to call the Board of Education before noon on December 11, 2007 in order to be placed on the agenda for the December 12, 2007 Board meeting. [REDACTED] obtained the number to call the Board of Education to be placed on the agenda from her former teammate, [REDACTED]. Prior to making the call to the Board of Education, [REDACTED] had discussed the matter with [REDACTED] and her

[REDACTED] had given her permission to make the call and had agreed to take her to the Board meeting to speak on Ms. Stiles' behalf. Another one of [REDACTED] teammates, [REDACTED] had also obtained the number to call the Board of Education.³

On December 11, 2007, at approximately 11:30 a.m., when Jayvonna was in the hallway after her 3rd, 4th and 5th period US History and Government class and on her way to lunch, she ran into a three of her teammates [REDACTED] and they all agreed to meet in the girls' bathroom located near the gymnasium. When the girls arrived at the bathroom they asked one of the physical education teachers, Ms. Cox, to unlock the door for them. The girls told Ms. Cox that they needed to use the bathroom to call the Board of Education before noon to place themselves on the agenda for the following evening's Board meeting to speak on behalf of Ms. Stiles. Ms. Cox unlocked the door for the girls.

While in the bathroom, using [REDACTED] cell phone, [REDACTED] called the number that [REDACTED] had been given by her friend and former teammate and spoke to one of the Board of Education's secretaries, either Emlyn Rivera or Bertha Steckmeyer. Each girl requested to be placed on the speaker's list for the December 12, 2007 Board of Education meeting. The girls placed one phone call and passed the phone to each other and gave the secretary their name, address, phone number and the topic about which they were requesting to speak. A review of the handwritten log of speakers reveals that the order in which the girls spoke to the secretary was [REDACTED]

[REDACTED] Shortly thereafter, another group of girls called the Board of

³ Other information obtained by the Special Independent Investigator suggests that Mr. Sorrentino may have discussed with the girls on the team whether to call the Board of Education and to speak at a Board meeting on Ms. Stiles' behalf. Mr. Sorrentino, however, did not state that he urged the girls to take such action.

Education and also asked to be placed on the speaker's list for the December 12, 2007 Board meeting. The second group of callers were [REDACTED]

The Board of Education employs two Senior Stenographers (secretaries), Emlyn Rivera and Bertha Steckmeyer. Ms. Rivera and Ms. Steckmeyer maintain a handwritten log of persons who request to speak at a Board of Education meeting in the Board of Education Office. Board of Education meetings are held in the evening of the 2nd and 4th Wednesday of each month. The time to place your name on the speaker's list closes at noon on the Tuesday immediately preceding the Board meeting. At or before noon on the Tuesday before a regularly scheduled Wednesday Board meeting, Ms. Rivera begins to type the Speaker's List in preparation for both the Superintendent's Cabinet meeting every Wednesday morning and the Wednesday evening Board meeting. It is Ms. Rivera's ordinary practice to provide the Superintendent's Chief of Staff with a copy of the Speaker's List prior to the Wednesday morning Cabinet meeting. Based on a review of the handwritten log, Ms. Rivera and Ms. Steckmeyer identified for the Special Independent Investigator the names they wrote on the log. Specifically, Ms. Steckmeyer took the calls from [REDACTED] and recorded their information on the handwritten log. Ms. Rivera took the calls from [REDACTED] and recorded their information on the handwritten log.

Sometime between the time when the seven girls called the Board of Education, after 11:30 a.m. and before 1:00 p.m. on December 11, 2007, Mrs. Barton was advised that seven girls from McKinley had called the Board of Education and requested to speak at the December 12, 2007

Board meeting on behalf of Ms. Stiles.⁴ Both Ms. Steckmeyer and Ms. Rivera contend that they did not call and notify Mrs. Barton of the calls to the Board of Education. Conversely, one of the parents of one of the girls who called the Board of Education indicates that she was advised by Mrs. Fatima Morrell, Principal-on-Assignment at McKinley, that Mrs. Barton received a call from one of the Board secretaries advising her of the phone calls.

Immediately after learning this information, Mrs. Barton called [REDACTED]

[REDACTED] During that call, Mrs. Barton advised [REDACTED] that his daughter had called the Board of Education and requested to be placed on the speaker's list for the December 12, 2007 hearing. [REDACTED] immediately called the Board of Education and spoke with Board secretary Emlyn Rivera and asked that his daughter's name be taken off the speaker's list. [REDACTED] then left his office at [REDACTED] and drove to McKinley to meet with Mrs. Barton and his daughter to discuss this matter. During the meeting with Mrs. Barton, [REDACTED] further described to Mrs. Barton how the calls were made to the Board of Education and also described a rift between the upper and lower classmen on the basketball team relating to Ms. Stiles.

In addition, Mrs. Barton reached out to [REDACTED] and the [REDACTED]. As the Director of this Program,

⁴ The Special Independent Investigator has endeavored to determine who advised Mrs. Barton that seven young women from the McKinley girls' basketball team had called the Board of Education and requested to speak on behalf of Ms. Stiles. Information gathered by the Special Independent Investigator suggests that either, Ms. Cox, one of the Board of Education Senior Stenographers, Emlyn Rivera or Bertha Steckmeyer, or a member of Dr. Williams' staff notified Mrs. Barton. The Special Independent Investigator acknowledges that who called Mrs. Barton is not the critical issue, rather what Mrs. Barton did is the proper focus of this inquiry.

works at least on a weekly basis with McKinley and is frequently in the McKinley building. By coincidence happened to be in the McKinley building on December 11, 2007 in the late morning/early afternoon timeframe. As with and Mrs. Barton had a conversation with and concerning the girls' use of a cell phone to call the Board of Education and the girls' request to speak on behalf of Ms. Stiles. also indicated to Mrs. Barton that she did not want her daughter to speak to the Board of Education on December 12, 2007. does not, however, recall calling the Board of Education and removing her daughter's name from the speaker's list.

The Special Independent Investigator has learned that Mrs. Barton instructed Mr. Sorrentino to contact the parents of the girls who requested to speak at the December 12, 2007 Board meeting and to advise the parents of the students' intent to speak "in the event that they made false allegations which would defame someone's character - as the parents would be held responsible for their children's actions and not the school."⁵ Mr. Sorrentino did not advise the Special Independent Investigator of this instruction by Mrs. Barton. Neither nor another girl's mother, received a call from anyone at McKinley concerning and her daughter's request to speak at the December 12, 2007 Board meeting.

According to Ms. Rivera, Mrs. Barton contacted the Board of Education office and directed her to remove the names of the seven McKinley students from the speaker's list. However, Ms. Rivera advised Mrs. Barton that she could only do so with the permission of the student's parent.

⁵ Based on the totality of the information received by the Special Independent Investigator, it is believed that the "false allegations which would defame someone's character" to which Mrs. Barton referred is the information she learned from and concerning the fact that Mr. Daye was allegedly involved in an extra-marital affair with the adult of one of their teammates.

Mrs. Barton then contacted the Board office a second time and indicated that she had spoken with the parents of the girls on the speaker's list and that the parents wished to have their children's names removed from the list. Based on Mrs. Barton's representation that she had spoken with the girls' parents, Ms. Rivera removed the seven girls' names from the December 12, 2007 speaker's list.

7. The School's Response

Immediately after learning of the calls to the Board of Education and the rift between and among the girls on the basketball team, Mrs. Barton requested that the members of the girls' basketball team, and Mr. Sorrentino, meet with her in her office. Specifically, at approximately 1:00 p.m., Mrs. Barton directed Mrs. Fatima Morrell, Principal-on-Assignment to McKinley, and the school security officers to retrieve all of the girls from their respective classes. During the same class period, [REDACTED] learned from a team member that Mrs. Barton had been made aware of the phone calls to the Board and that students were being called to the office. She asked and received permission from her Environmental Science teacher to go to the Security Office to question whether the Board could call the school and disclose the names of the students who made the calls. After speaking with security staff [REDACTED] received a pass to allow her to return to her class. [REDACTED] did not return to her class. While in route to class, [REDACTED] [REDACTED] secured some belongings from her locker and left the building [REDACTED] but without permission, at approximately 1:00 p.m.⁹

⁹ As noted above [REDACTED] had sought and obtained early release from school at 1:30 p.m. every day. On December 11, 2007 [REDACTED] left school [REDACTED] before the early release time.

Thus, at the time of the meeting [REDACTED] could not be located and it was concluded by Mrs. Barton and Mrs. Morrell, that she had left the building without permission. Accordingly, [REDACTED] was not present for this meeting. During this meeting, Mrs. Barton reminded the girls of the cell phone policy. She discussed her concerns regarding reports about team dynamics, personality conflicts and disharmony among members of the team. Mrs. Barton explained that Ms. Stiles had been dismissed and that the team needed to focus on playing as a team and to move beyond Ms. Stiles' dismissal. Mrs. Barton refused to answer questions about Ms. Stiles' dismissal during the meeting.

Mrs. Barton asked the girls to explain the circumstances surrounding the rift between the upper and lower classmen on the basketball team. During the meeting, several of the girls expressed frustration that their team and Ms. Stiles were being punished for the adult actions of Mr. James Daye, a member of the McKinley High School faculty and coach, and a relationship that he was having with the adult [REDACTED] of one of the players on the team. Following the larger team meeting [REDACTED] remained after and spoke privately with Mrs. Barton and Mrs. Morrell and explained that they had information that Mr. Daye was involved in a relationship with the adult [REDACTED] of one of their teammates. Mr. Daye and [REDACTED] confirmed their friendship.

Consistent with the Code of Conduct, Mrs. Barton confiscated the cell phone used for the first series of calls to the Board. Several girls who made the phone calls were not disciplined in any way after their parent met with Mrs. Barton or Mrs. Morrell. Others were given a "suspension"

pending" letter with two days of detention, conditioned on a conference with a parent on the next day. With the exception of Jayvonna, no other girl was suspended.

8. Fatima Morrell's Relationship with [REDACTED]

Fatima Morrell became a Principal-on-Assignment at McKinley in September 2007. Prior to the events of December 11, 2007, Mrs. Morrell handled [REDACTED]

[REDACTED]

[REDACTED] McKinley has on staff three guidance counselors and each student is assigned a guidance counselor [REDACTED]. Mrs. Caruana advised the Special Independent Investigator that the guidance counselors receive referrals from teachers, parents, and other staff if a student is "acting out" or is exhibiting certain

behaviors suggestive of deeper emotional problems. [REDACTED]

[REDACTED]

9.

T

Following the meeting of December 11, 2007, Mrs. Morrell reviewed [REDACTED] conduct regarding the use of a cell phone and leaving the building without permission. [REDACTED]

[REDACTED]

[REDACTED] On the same day, she directed the clerical staff to prepare a letter, to the "parent/natural guardian" of [REDACTED]

[REDACTED]

On December 12, 2007, a [REDACTED] was held in Mrs. Morrell's office with [REDACTED]. Also present was McKinley Security Officer Charles Palumbo. [REDACTED]

[REDACTED]

[REDACTED] left Mrs. Morrell's office, over the objection of both Mr. Palumbo and Mrs. Morrell. [REDACTED]

[REDACTED]
[REDACTED] Mr. Palumbo prepared an affidavit summarizing this occurrence.

On the following day, Mrs. Morrell reviewed her recommendation [REDACTED] with Mrs. Barton and to advise her of the outcome of the [REDACTED] conference. Mrs. Barton made a decision, [REDACTED] [REDACTED]

[REDACTED]
[REDACTED] would request the Superintendent to conduct a formal suspension hearing.

10. The December 12, 2007 Board Meeting

On the evening of December 12, 2007 [REDACTED] went to the meeting of the Board of Education. They believed that [REDACTED] was on the list of scheduled speakers, as a result of her phone call to the Board the previous day. Two other members of the team were also present and believed that they were going to speak at the meeting. At the conclusion of the Board meeting [REDACTED] inquired of Board secretary, Emlyn Rivera, why the children who had requested the opportunity to speak were not given that opportunity. Mrs. Jones was advised that the Board had received a call stating that the parents of the children did not want their children's names on the list, so the names were removed. [REDACTED] indicated that she is a parent of one of those children and that she was never called nor asked for her child's name to be removed. Immediately following this conversation [REDACTED] and the other children signed their names to the speaker's list for the January 9, 2008 Board meeting and specifically stated that their names were not to be removed.

11. The [REDACTED]

On December 13, 2007, at Mrs. Barton's direction, the clerical staff at McKinley prepared and mailed a letter to the "parent" of [REDACTED] by Federal Express, to advise that effective the same date, [REDACTED]. The letter indicated that Mrs. Barton had requested the Superintendent [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This letter was received by [REDACTED]. The following wording was handwritten at the bottom of the page: [REDACTED]

[REDACTED] also received a second letter from the school, dated December 13, 2007, which was almost identical to the first letter, except that the date and the [REDACTED] was different. It read: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Also on December 13, 2007, at Mrs. Barton's direction, the clerical staff prepared a [REDACTED]

[REDACTED] form to be faxed to Pupil Personnel Services. The form [REDACTED]

[REDACTED]. The [REDACTED] set forth in the request read: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mrs. Morrell reviewed a draft of the [REDACTED] request form before it was faxed by the clerical staff to the office of Pupil Personnel Services. Mrs. Morrell then wrote in large letters [REDACTED]

[REDACTED] at the top center of her copy of the December 12, 2007 letter, which was placed in the student's file.

12. Pupil Personnel Services

When the faxed request for the [REDACTED] was received in the Pupil Personnel office, the clerical staff created a file which was directed to Dr. Monica Peoples, Assistant Superintendent for Student Support Services and Compliance. Dr. Peoples reviewed the [REDACTED] form paying particular attention the charged misconduct, as instructed to do so by her predecessor, Mr. Eric Rosser. [REDACTED]

[REDACTED]

Dr. Peoples identified a date [REDACTED] As instructed by her predecessor, Dr. Peoples modified the charges contained in Mrs. Barton's request document, so that [REDACTED]. This is known as the "one date/one [REDACTED]".

Dr. Peoples then prepared a letter to the parent/guardian of [REDACTED] which advised of the [REDACTED]. The [REDACTED] set forth in the notice to the student's guardian, as modified by Dr. Peoples, read: [REDACTED]

[REDACTED] The notice letter, dated December 17, 2007, was delivered to [REDACTED] by Federal Express on the following day. However, the notice was not addressed to a specific individual and only included [REDACTED] home address.

By letter dated December 17, 2007, Mary Jo Pfeiffer, Director of the Committee on Special Education notified Mrs. Barton of the date, time and place of the [REDACTED]. This letter contained the [REDACTED] as prepared by Dr. Peoples.

[REDACTED] hearing was scheduled for [REDACTED] Dr. Peoples had assigned [REDACTED] Lorene Boyd to the [REDACTED] scheduled for December 21, 2007 at School #26. For reasons unknown to Dr. Peoples, Kelli Daniels was [REDACTED]

present at School #26 on December 21, 2007, not Lorene Boyd, and Ms. Daniels conducted

13.

The [REDACTED]
Kelli Daniels has been a hearing officer in the Office of Pupil Personnel Services for three years. On December 20, 2007, consistent with standard operating procedure, the clerical staff at McKinley prepared a student folder [REDACTED]. Mrs. Morrell believes that the documents placed in the student folder were [REDACTED] the December 17, 2007 letter from Mary Jo Pfeiffer to Mrs. Barton and a [REDACTED]. [REDACTED] recalls that there were certain additional documents in the folder [REDACTED] including, an attendance summary, a report card, and current teacher's reports.

Mrs. Morrell, who is responsible for the academic performance and all matters related to the freshman and senior classes, [REDACTED] represent the school and [REDACTED] if necessary. In preparation [REDACTED], Mrs. Morrell briefly reviewed the contents of the folder prepared by staff on the day before the hearing and carried the prepared student folder to School #26 on the [REDACTED].

[REDACTED] At that time, Mrs. Morrell was wholly unfamiliar with the policy and practice of the Office of Pupil Personnel Services [REDACTED].

On the day of the hearing, Ms. Daniels took with her to [REDACTED] a four page document, titled, "Office Memorandum" developed by Pupil Personnel Services [REDACTED]

[REDACTED] copy of Ms. Pfeiffer's December 17, 2007 letter to Mrs. Barton, [REDACTED] Ms. Daniels was scheduled to conduct five hearings on this date. Ms. Daniels did not review the file maintained at the Pupil Personnel Services office prior [REDACTED]

Ms. Daniels did not see the contents of the file brought by Ms. Morrell prior to [REDACTED] [REDACTED] but did examine the file [REDACTED] When reviewed, the file contained the following items: [REDACTED]

On Friday, December 21, 2008, Hearing Advocate Eugene Thomas was assigned to School #26 to represent students and parents at hearings. He is employed by the Youth Advocacy Program of the Buffalo Federation of Neighborhood Centers, Inc. This program provides representation to students at Board of Education hearings [REDACTED]

[REDACTED] It is the advocate's responsibility to assist the student and parent during the hearing.

[REDACTED]

Prior to the start [REDACTED] Ms. Daniels recalls that she and Mrs. Morrell had a discussion in the second floor reception area, with respect [REDACTED] procedure and why Mrs. Morrell would not be allowed to enter the hearing room at the beginning [REDACTED] Mrs. Morrell had in her possession a copy [REDACTED] which Mrs. Barton faxed to Pupil Personnel Services on December 13, 2007. [REDACTED]

[REDACTED] Ms. Daniels advised Mrs. Morrell to contact Dr. Peoples to discuss her questions.

[REDACTED]

Also, prior to the start [REDACTED] Ms. Daniels telephoned Dr. Peoples to advise her that she was running behind with the hearing scheduled before the [REDACTED] hearing and that both [REDACTED] [REDACTED], the parent of a student witness were upset with the long wait. [REDACTED] was very upset and expressed his frustration and anger to Ms. Daniels regarding the delay in starting [REDACTED]. Ms. Daniels recalls that she was having trouble with each of her assigned hearings on this day and that everyone was frustrated on the morning [REDACTED]

Ms. Daniels advised Ms. Morrell that she would call Ms. Barton to explain the events of the morning. [REDACTED] called Dr. Peoples later in the day to complain about the delay in starting [REDACTED] to complain about the manner in which Ms. Daniels had spoken to him. He informed Dr. Peoples that he felt that Ms. Daniels was disrespectful to him.

The [REDACTED] began at 10:10 a.m. due to an extensive delay [REDACTED] conducted by Ms. Daniels. Pursuant to Pupil Personnel standard procedure [REDACTED] was tape recorded. At the outset, Ms. Daniels identified herself, allowed all parties to introduce themselves and advised [REDACTED]

[REDACTED] At the outset, Ms. Daniels determined that the anecdotal record had been reviewed by [REDACTED]. She advised [REDACTED] that if they did not have an opportunity to review the file before [REDACTED], they would have an opportunity to do so after the completion of the proceeding, as it did not have any bearing on the case.

The [REDACTED] reflects the following discussion:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

