

Investigation Report

To: Dr. Iline Tracey
Superintendent
New Haven Public Schools

**Confidential and Privileged
Attorney-Client Communication**

From: Amita P. Rossetti, Esq.
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Date: October 26, 2020

Subject: Investigation Concerning Complaint of Harassment

I. Executive Summary

Our firm was retained by City of New Haven Public Schools (“NHPS”) to investigate a harassment complaint by Philip Penn, Chief Financial Officer (“CFO”) of NHPS concerning Darnell Goldson, an elected member of the NHPS Board of Education (“BOE”).

Our investigation included review of the relevant materials, including video recordings of several BOE meetings, materials, minutes and emails. We also reviewed several relevant contracts and policies, including the BOE Bylaws, City Charter, Procurement Policy and state and federal case law and statutes.

Mr. Penn’s complaint alleges Mr. Goldson unfairly accused him at public meetings of the BOE of making decisions regarding the BOE’s engagement of outside counsel on the basis of race. Mr. Penn alleges that his personal and professional reputation have been harmed as a result of this conduct and requested that the BOE investigate the matter. Based upon our investigation, we conclude that several statements made by Mr. Goldson concerning the contracts for services provided by minority-owned businesses were false. The premise behind the statements made by Mr. Goldson is that these contractors were entitled to funds that were being reallocated. These proposed reallocations of funding for the contracts discussed at the March 23, 2020 meeting, and subsequently the April 13, 2020 meeting, are internal changes to budget line items. The reallocations simply seek to appropriately reflect the actual encumbrance of the funds as the fiscal year end approaches, in accordance with sound accounting principles followed by all Connecticut municipalities.

Based upon our investigation, we have concluded that the statements and actions reflected above were not authorized, adopted or otherwise approved as official acts or statements of the City or the BOE. Therefore, the statements and conduct in question are Mr. Goldson’s, and not properly attributable to the BOE or the City.

Nevertheless, certain statements made by Mr. Goldson were defamatory in nature and when taken in context, are reasonably interpreted as raising an unfair inference that Mr. Penn acted out of racial animus. While public officials, including Mr. Goldson, have a constitutionally protected right to express their opinions on matters of public concern, that right is not without limitation. Specifically, the BOE adopted Bylaws that set forth the rules that govern the conduct of BOE members. Based upon our investigation, Mr. Goldson's conduct violated the following provisions of the BOE Bylaws: Section 9020; Section 9271(k); subsections (A) through (I) of Section 9325(a); and Section 9271(f). Given that the term "harassment" is not defined in the Bylaws, we leave the determination of whether the conduct constitutes harassment as used therein to the BOE based upon consideration of all of the facts and circumstances.

As a result of our investigation, we recommend that the BOE take appropriate measures to preserve order and decorum at their meetings. We further suggest that the BOE correct the record with regard to the false statements regarding Mr. Penn and adopt a resolution to address any potential future conduct. We also suggest that the BOE members participate in some form of training or education seminar in a mediation or retreat setting to promote cooperation and understanding among the members and to focus on the tasks required to serve the students of NHPS.

II. Introduction

Our firm was retained by City of New Haven Public Schools ("NHPS") to investigate a harassment complaint by Philip Penn, Chief Financial Officer ("CFO") of NHPS concerning Darnell Goldson, an elected member of the NHPS Board of Education ("BOE"). Mr. Penn's complaint alleges Mr. Goldson has unfairly accused him at public meetings of the BOE of making decisions regarding the BOE's engagement of outside counsel on the basis of race. Mr. Penn alleges that his personal and professional reputation have been harmed as a result of this conduct and requested that the BOE investigate the matter.

III. Preliminary Review; Scope; Information Reviewed and Considered.

A. Preliminary Review

We were contacted initially with regard to this matter on June 10, 2020. We were provided preliminary information concerning the identity of the parties involved and a general overview of the subject matter of the complaint.

We were provided additional materials on June 17, 2020, including a copy Mr. Penn's written complaint.¹ Mr. Penn's complaint was submitted in the form of an email communication to NHPS Superintendent Dr. Tracey dated March 23, 2020, sent shortly after the BOE meeting of the same date. Mr. Penn complaint alleges:

¹ Copy attached hereto as Exhibit A.

During tonight's Board of Education Meeting, Board member Darnell Goldson accused Attorney Michael Pinto and me of making decisions regarding the use of outside counsel on the basis of race.

As a result of that outrageous accusation in a public meeting, my personal and professional reputation has been damaged by Mr. Goldson. Thus, I have no choice but to raise this formal harassment complaint against him.

I would ask that the matter be investigated and that I be provided a copy of the recording of tonight's meeting so that I may review it with my personal attorney for potential litigation against Mr. Goldson.

Our preliminary review also included a review of the meeting agenda, meeting minutes and a partial transcript of the BOE's March 23, 2020 meeting, and an interview of Mr. Penn concerning his allegations. We further reviewed video recordings of several BOE meetings beginning with the BOE's meeting held on the date of Mr. Penn's complaint, March 23, 2020. We then proceeded with discussions with members of the BOE and staff of NHPS directed at defining the scope of the investigation.

We were engaged to proceed with an investigation on June 29, 2020.

B. Scope of the Investigation

The following is the scope of the investigation and the matters on which we were directed to report back to the BOE:

To determine whether the complaint is substantiated and what, if any, action should be taken in response. Necessary components of the work entailed the following:

A factual investigation of the circumstances underlying the complaint by BOE CFO Phillip Penn of harassment by BOE member Darnell Goldson;

An opinion as to whether the conduct found to have been committed constitutes harassment or violates any federal or state statutory or common law obligation of the City, or any provision of the City Charter, Ordinance, section of the City's Code of Ethics, or BOE by-laws;

An assessment as to the City's obligation to protect its employee from the conduct and if the City is so obligated, what steps the City should take to fulfill its obligation.

C. Information Reviewed and Considered

1. Communications with Mr. Goldson and his Counsel

On July 30, 2020, we sent notice of the investigation to Mr. Goldson, both electronically and via certified mail, return receipt requested. On July 31, 2020, we received an email from Emily Hays of the New Haven Independent, seeking comment on the investigation into Mr. Goldson's conduct.² The email contained a representation by Ms. Hays that she was able to speak with Mr. Goldson's counsel. After being thus informed that Mr. Goldson was represented by counsel, on August 4, 2020 we sent an email to Mr. Goldson requesting the contact information for his counsel. Mr. Goldson promptly replied identifying his counsel as Attorney John R. Williams of New Haven. We did not hear from Attorney Williams, however, and on August 13, 2020, we contacted Attorney Williams. During the initial conversation, we learned that Attorney Williams had attempted to contact us by email, but had typed the email address incorrectly. Attorney Williams informed us that his client declined to participate in the investigation. Attorney Williams also re-sent his misdirected correspondence, which we concluded contained certain incorrect factual statements.³ We responded to Attorney Williams' correspondence on August 13, 2020, correcting the factual inaccuracies and advising Attorney Williams that should Mr. Goldson change his mind with respect to participating in the investigation, we would be happy to discuss this matter with him.⁴

On October 19, 2020, in order to ensure that Mr. Goldson had been given an appropriate opportunity to participate in the investigation and express his views, we sent another communication to Attorney Williams, renewing the invitation for Mr. Goldson to participate. Attorney Williams again responded that Mr. Goldson would not participate or respond to any questions.

2. Persons Interviewed

Over the course of the investigation, we spoke with BOE members and staff, including Philip Penn, Dr. Iline Tracey, Dr. Edward Joyner, Mr. Larry Conaway, Mr. Matthew Wilcox and Ms. Yesenia Rivera. We attempted to speak with Dr. Tamiko Jackson-McArthur, without success. As noted, Darnell Goldson declined to participate, as did Mayor Justin Elicker.

3. Additional Information Reviewed and Considered

We reviewed the Board of Education Bylaws, including the Code of Ethics, and the City Charter, along with both Connecticut and federal case law and statutes regarding harassment, defamation

² Copy attached hereto as Exhibit B.

³ Copy attached hereto as Exhibit C.

⁴ Copy attached hereto as Exhibit D.

and discrimination. We have also reviewed relevant portions of Robert's Rules of Order, Newly Revised.

We reviewed contracts for legal services between the BOE and Shipman & Goodwin LLP, Law Office of W. Martyn Philpot, Jr., LLC, and Berchem Moses, P.C and the contract with Tim's Enterprises, LLC, a snow removal contractor, which was discussed at the April 13, 2020 BOE meeting.

BOE member Matthew Wilcox provided a copy of the newly revised Finance & Operations cover sheet that is requested of all BOE contractors. For purposes of comparison, Mr. Wilcox also provided a sample of the former version.

Throughout the course of the BOE meetings and interviews, there were several references to a draft procurement policy. We received and reviewed a procurement policy approved at the June 22, 2020 BOE meeting, which requires affirmative steps to be taken and documented to solicit locally owned, minority and woman-owned and small businesses. Additionally, Lilia Snyder provided information with regard to the city-based business preference policy, which is codified at Sec. 2-483 of the New Haven Code of Ordinances.⁵

We also received and reviewed documentation concerning the Food Service Program discussed at the June 8, 2020 BOE meeting.

We also reviewed the recordings of the Board of Education meetings, minutes and written materials from BOE meetings,⁶ as well as emails among Board of Education staff and members.

4. Relevant Excerpts of BOE Meetings

a. The March 23, 2020 BOE Meeting

Mr. Penn's written complaint is in the form of an email which he sent to Dr. Tracey shortly after the conclusion of the March 23, 2020 BOE meeting. The recording of the BOE meeting conducted remotely on that date on the Zoom Video Communications® ("Zoom") teleconferencing platform reflects the following discussion:

⁵ Sec. 2-483(a) defines "city-based business" as ". . . a business with its principal place of business located within the City of New Haven. A business shall not be considered a "city-based business" unless evidence satisfactory to the purchasing agent has been submitted with each bid to establish that said business has its bona fide principal place of business in New Haven. Such evidence may include evidence of ownership of or a long-term lease of the real estate from which its principal place of business is operated, or payment of property taxes on the personal property of the business. A "city-based business" shall maintain such status throughout the term of any contract with the City of New Haven. Failure to maintain such status shall be grounds for the city to terminate said contract."

⁶ We reviewed the BOE meetings beginning March 23, 2020 through September 28, 2020. The recorded BOE meetings are available online at: <https://www.nhps.net/site/Default.aspx?PageID=595>.

Wilcox:

Alright, thank you. . . so the first item discussion and action on the abstract agreements. Everyone has received the action items, the F&O⁷ committee met as scheduled using Zoom. Which worked okay. Um, and you have or we are recommending an approval for one abstract and three agreements. So I would like to move that we accept the abstract. And agree to the agreements.

Rivera:

Is there a second?

Joyner:

Second.

Rivera:

Discussion, Mr. Goldson.

Goldson:

Thank you. Item number—I mean—agreement number three with Berchem, Moses & Devlin suggests increasing their budget by \$40,000. And Mr. Pinto, I believe suggested at the Finance Committee meeting, that, that by reducing the contract for the only African American law firm, uh, that we do business with, which is a local law firm. And the only local law firm, that we do business with. And I will absolutely, disagree with that. And, for your information, he has not even had a conversation with that law firm. He announced it at the board meeting, but when I called the law firm to ask what was going on, they said they didn't even know about it. They said that he asked them for information a few months ago and they never got back to him. I think that is unfair and that it is not the right way to do business. And it's certainly not the right way the right way to do business with a local law firm. So I would . . . I do not have a problem with adding money to Berchem's contract, but I do have a problem by using money from an already established long-term contractor with this district, who was given no reason why his contract was being ended, um, or reduced.

Pinto:

Madam President, may I?

Rivera:

Mr. Pinto.

Pinto:

All of the contracts that we have with our law firms are not to exceed contracts. So we have a line item for outside counsel, and the contract with the firm that Mr. Goldson was referred to, is not being utilized because we don't have as many . . . have as many expulsion cases this year. So we are simply reducing the purchase order in order to reallocate some of that money to the Berchem contract. The Berchem contract does need to be amended because we are exceeding the amount on the contract. So-- in addition, it is not accurate to say that we are only reducing the Martin Philpot. We are also reducing Shipman & Goodwin, who are also a local firm. They have a New Haven office. So, just to. . . for the record, we are reducing one of Shipman's contract and also Martin Philpot's contracts and reallocating some of that money for the. . . for Berchem.

⁷ "F&O" refers to the BOE's Finance and Operations Committee.

Rivera:

Mr. Goldson.

Goldson:

At the finance meeting he never mentioned Shipman. He mentioned Philpot. Philpot is the only African-American law firm that we are doing business with, and doing business with this firm for many, many years. And to reduce the contract, or suggest transferring money from that contract, to another contract without even having a conversation with the contractor, I would suggest is the wrong way to do business with our contractors. Again, I am not opposed to Berchem getting more money. I am not, I am just opposed to giving him money by snatching it out of a contract with a local, African-American firm. So, if I hear that we are not doing that, then I have no problem voting for this contract.

Pinto:

We are not snatching. We just don't anticipate using all the money originally encumbered for that contract. [Indiscernible]

Goldson:

You don't anticipate it now and then you may anticipate it in the future, I don't know. We did not have a discussion with this contractor. That is not how you do business. You sign a contract and then if you are going to reduce the contract, you have a conversation with that contractor. And come to a mutual agreement and a meeting of the ways. That didn't happen here. And this contractor didn't know until I called him on Saturday. I think it's unfair. And I would suggest that . . . I am willing to vote on the item if it is clear that we are not reducing that contract of that contractor until Mr. Pinto and that contractor meet and. . .and have discussion.

Rivera:

Any other discussion?

Wilcox:

Yes.

Wilcox:

My understanding is that we can approve this. The wording of this agreement here, it does not say where the money is going to come from. My understanding is some monies can be moved around, at the discretion to increase particular lines. Is that not the case? I mean I guess what I am saying by approving right now, we are just approving and adding to this particular law firm, we are not saying from where the money will come.

Goldson:

Madam Chair, or Madam President, that is not what Mr. Pinto said at the meeting, that is not what he said today. I would like to amend the approval of this contract, so that the local African-American law firm contract is not reduced until he meets with the contractor and they come to a meeting of the minds.

Joyner:

Mr. Pinto is muted. I can't hear what he's saying.

Goldson:

Is he talking?

Joyner:

He was. His lips were moving.

Wilcox:

I have a motion on the floor to move these agreements.

Rivera:

Alright, there is a motion on the floor, it has been properly seconded.

Goldson:

I am asking to amend his motion. You guys have done that to me

Rivera:

He did not agree to the motion to the amendment.

Goldson:

He did not say that.

Wilcox:

I am in the process of trying gather information. What I am missing here, is. . . are we talking about funds being encumbered at this time does the other contracts need to be adjusted? Particularly since these are contracts that are not to exceed which means if we are not needing to use these companies, then we are not going to be giving them money for their services. I can . . . this is a moot point, so I am trying to figure out if the line item has to be increased in order to pass this?

Penn:

Madam President, its Phil Penn, can I speak?

Rivera:

Yes, Mr. Penn.

Penn:

So, the objective of this and I was working with Mr. Pinto on it, was trying to keep the overall legal spend of \$400,000 which is what our budgeted item was. As it has already been pointed out, the contracts are setup as not to exceed. Um, the objective in doing this is to make sure that as legal items arise, during the year. There is a bit of guesswork at the beginning setting this up. We do not know exactly how much we are going to spend with each firm. We try to reallocate dollars where we think it is going to be necessary to have them. Berchem Moses had some legacy issues that carried over the prior year that required us to put in some additional funding . . .

Goldson:

Every year.

Penn:

. . . They have traditionally been our special education company. Looking at the actual utilization of the other two firms, we're adjusting those two firms downward in order to fund the Berchem Moses increase and keep the budget item at the \$400,000. If we do not take step two, which is the reduction, in addition to the increase, it will put us over in that line item for the year. And add further to the deficit.

Wilcox:

But my understanding it will add further to the deficit only if we needed to utilize those law firm's services?

Penn:

Correct, but what I would tell you is that we've already taken a deep dive in terms of where we think the year is going to end. We think we can manage within the 400,000 but we cannot go over that 400. I think it's unwise to say we should not plan on reducing the other two at this point.

Joyner:

Madam Chair, point of clarification?

Rivera:

Dr. Joyner.

Joyner:

The volume of cases handled. . .It sounds like to me that these cases handled by one firm is higher than the other two. Is that correct?

Penn:

I think is more correct Dr. Joyner to say that the volume of cases was higher than we originally anticipated for that firm.

Joyner:

Ok, so you are having a lower volume in those areas where you are reallocating or taking from, and a higher volume in Berchem & Moses.

Penn:

That is correct.

Joyner: *So the next question is really for going forward. Will those other two firms have the opportunity to bid on special education cases or special ed concerns? Within the next fiscal year?*

Tracey:

No.

Goldson:

[Indiscernible]

Joyner:

I am not finished.

Goldson:

Yes sir.

Joyner:

So, the volume of cases handled by Berchem & Moses basically special education is a much higher volume. You have a fixed amount of money for the whole legal support budget. Because of certain changes in the school year, it may be that the volume handled by the other two firms will be lower? Because I am trying to figure out a rational, removing other things out of the equation and looking at the amount of money that we are spending. Is that the case?

Penn:

Yes, it is Dr. Joyner.

Joyner:

Okay, thank you.

Goldson:

Madam President.

Rivera:

Dr. Tracey and then Mr. Goldson.

Tracy:

What I'm hearing from the special director. Some of the things that Berchem & Moses dealing with are legacy cases. They are not necessarily special education cases. Leftover cases that they have to deal with on our behalf.

Goldson:

Madam President.

Rivera:

Mr. Goldson.

Goldson:

Every year, Berchem . . . we approve additional funding for Berchem every year. Shipman and Goodwin gets about \$100 more an hour than, than the other contractors. So they do fairly well by doing less, by using less hours and getting paid the same. This company has been fair to us. And it doesn't overcharges us. It is a local company. It is the only black local company. Last year, they threatened to cut it completely and I fought back but luckily I was the president and was able to stop it. This year I guess not being president I cannot protect him. He's a black firm and he's a local firm and this whole idea that other people are given these legacy cases and he's not it's just unfair. I am going to say, he is a black firm, the only black firm doing business with this, with this, with this district. This is not going to end here. Next year he will have less money, the year after less money, and then he won't be doing business anymore. It is unfair. The way the contracts are given out—it's not bid, it's not competitive, it is like I think you do a better job so I'm gonna give it to you. That's the nice way of putting it, we all know what the real deal is. So, um, I am again going to ask one more time, that this board not approve reducing the only African-American law firm's doing business with this district contract.

Joyner:

That is not a part of the motion.

By approving this motion will not discredit the other firm.

Goldson:

It would.

Joyner:

That's why we've been trying to get professional procurement . . .

Goldson:

If we approve this, the chief operating officer and now the chief financial officer are making it clear, that this money will come out of the contract of an African American contractor. Who already has the smallest contract in the district. And charges less per hour than the other two contracts.

Wilcox:

Okay, if I may?

Rivera:

Mr. Wilcox.

Wilcox:

I am not going to agree to add this to the friendly amendment. I do not see it as friendly. I am wondering if the suggestion here is we should expel more students in order for the company that has the contract to handle expulsions?

Joyner:

That's a good point.

Wilcox:

I mean... These are...As I recall from being on the committee that approved the contract last year, and it has been a year or so ago since we have approved the legal contract. These firms have a contract to represent us in certain matters. And if the financial folks here are saying based on our caseload, we are not needing as much representation in those certain matters and were going to change fund encumbrances so as not to go over budget, I just don't see why that's an issue. I am not going to agree to it.

Goldson:

Y'all can make whatever excuses you're going to make...

Rivera:

Hold on. Mr. Goldson, you haven't been addressed by the chair.

Goldson:

Y'all can make whatever excuses you want to make but you're taking money from a black firm's pocket. Thank you. [Indiscernible.] Go ahead. Go ahead and vote.

Rivera:

Okay. We have a motion on the floor. If there is no other discussion we will vote.

Jackson-McArthur:

I would like more clarification. We are re-encumbering money to the Shipman because they are doing more work. We are saying that this other, smaller firm is not getting any cases. They do not have any interest of doing any of the other work that is in the district? Only expulsions?

Joyner:

That might be credentials, you are a pediatrician so you would not be doing orthopedic surgery. Lawyers are specialized. Most lawyers are specialized.

Jackson-McArthur:

Is that the case, Mr. Pinto?

Pinto

Historically Martyn Philpot he has handled the expulsion caseload for us—

Goldson:

Because that's what you gave him.

Pinto:

--there is a somewhat less heavy caseload this year, and—

Jackson-McArthur:

Which is good. Which is a good thing.

Pinto:

--yeah and we do not anticipate reaching the total amount encumbered. We are not actually changing the terms of the contract—

You're taking the legacy cases—

[Indiscernible – overlapping speakers].

Rivera:

Mr. Goldson, I am going to have to mute you.

Goldson:

Alright I'm sorry Madam President.

Jackson-McArthur:

Is the opportunity there? Does the opportunity for the smaller firm still remain for them to reach the maximum of his contract, if there was work fair for him?

Does he only do expulsions?

Pinto:

[Indiscernible - overlapping speakers] Primarily, yes.

Jackson-McArthur:

Are there opportunities for him to do other work? Or he doesn't do the other work?

I cannot hear you.

* * *⁸

Jackson-McArthur:

Does the smaller firm have the ability to do any other work side expulsion?

Pinto:

We can certainly evaluate that for next fiscal year.

If there is reasonable work that we can send to him, we will.

Rivera:

Dr. Joyner.

Joyner:

I think Mr. Wilcox was the voice of reason in this. First of all, Dr. Jackson, I know you understand this well in the medical profession you have people that have specialties.

Jackson-McArthur:

No, I understand Dr. Joyner . . . I just wanted to ask . . .

Joyner:

I know but I just wanna, I understand and I know, and I believe you are asking out of sincere. The thing about it, we have categories of lawyers that have various experiences. Shipman and Goodwin wrote the book for education law. And Berchem & Moses have been handling special education litigation for a very long time. And I suspect that's why they have been chosen. The school district spending money that is defensible. As time goes on, and I think Mr. Pinto has made a good point, next year if somebody wants to put on a bid to do additional work besides the work they're

⁸ Asterisks, as shown here, reflect that parts of the recording have been omitted from this report for purposes of length. The full recording is available at: <https://www.nhps.net/site/Default.aspx?PageID=727>

specialized in, but were all going to choose the person that can best represent the district, regardless to what their ethnicity is and such.

Goldson:

Mmmm.

Joyner:

And so yes. That is how I choose my doctor, my airplane pilot, my lawyer as well. And I think it takes us on a real downward slope. If we had Thurgood Marshall and we didn't give him work then I'd be concerned.

Goldson:

Oh wow.

Joyner:

And...I think this whole idea of trying to turn people against the board for various things is not productive. And I believe that Mr. Pinto, and Mr. Penn and Dr. Tracey are hiring the best people they can find. And I also believe that as other people demonstrate their proficiency in these areas, and we have a professional procurement contract, then we'll have some clear standards that we will use to hire people. I am done.

* * *

Goldson:

Historically, as you know, you have had this discussion a few months ago about Latino representation. Historically, I supported you. Historically -- the arguments used against our folks is that, they are not qualified. They do not know how to do the work. They're not Thurgood Marshall, you know, on and on and on. Or even worse yet, maybe next year will be their time, or the year after that will be their time. This is a contractor that the district has been working for with many years. And to change the contract without a conversation with him, as of yet, as of right now. They still have not had a conversation by the administration about his contract. And that is inherently unfair. You know it you had to deal with this a few months ago when you brought the issue up. The same arguments used against you, the same arguments now against the contractor. I am insulted by it. I think he would be insulted by it if he heard he was being compared to Thurgood Marshall. I think that was just unfair. And that is my last word.

Rivera:

Okay. No further discussion. We will put this to a vote. We will do a roll call so that I can hear everyone again.

The motion to pass the Finance and Operations (F&O) items carried by a vote of 4 to 3.

* * *

b. The April 13, 2013 BOE Meeting

The Zoom recording of the BOE meeting conducted remotely on April 13, 2020 reflects the following discussion:

Wilcox:

F&O met as usual last week by Zoom. I have for you today listed on the agenda I note that there were two action only items. I'll just mention that the committee did confirm that the signage for AI those material would be still of use for the fall so I note the two information only items and I move that we approve the one agreement and the four change orders that were listed as action items.

Joyner:

Second.

Rivera:

Any discussion? Mr. Goldson.

Goldson:

Thank you, Madam President. Um, agreement, um, number, change order, I'm sorry, number 1, which is increasing funding by \$25,000 to \$100,000 for on-call security camera systems and equipment repairs. I attended the finance committee meeting but I wasn't able to ask questions about that. I know someone asked why we were doing that and the answer was that we were adding cameras to the parking lot to add more coverage because of that shelter slash you know what that were opening there and I am wondering why the Board of Education is paying for that expenses as opposed to the city which is opening up the shelter...

Rivera:

Are you done Mr. Goldson?

Goldson:

Yea I have a couple of questions when we get into other issues but yes...

* * *

Goldson:

President um of course the idea was maybe being paid by the federal government is a great idea, but maybe is the opti—optimal word there. And that concerns me that we continue to find all these money to give to these outside contractors to put cameras in the parking lot when we already have cameras while we can't find additional funds to pay our first responder employees additional hazard pay money or our part-timers real minimum wages. I just got a problem with that so I'm gonna vote against that. My second question is, um, related to change order #3 which is adding \$15,000 for plumbing repairs beyond the scope of the house staff. Again, um, our buildings have gone from 200 to 500 to 1600 students plus staff, to maybe three or four staff in the building all day. How are we—and probably will be that way until the end of the year, we know through May and probably though June. How are we paying extra money for plumbing when we don't have anybody using the services and the toilets and the bathrooms anymore. So again, I don't understand why we're doing that. I think it's just the normal fluffing of these contracts at the end of the year and I've got a real problem with that. And I'm going to oppose that-- And my last

concern with this report is American waste. Again \$8700. What additional waste are we picking up when there's nobody in these buildings. Again, I think its one of those as we always do, at the end of the year, add money to these contracts now that we were told, well if they don't use the money, it'll come back to the budget. When do they don't use it? Quite honestly once the monies in the contract, you can almost guarantee they're going to spend it. So I am going to vote against, unless these are separated out from the package, I'm going to vote against the entire Finance & Operations report because I just think again, were not finding any savings while the schools are closed. We're adding money to this contract. I don't understand how a reasonable person could vote for this. It just doesn't make sense to me. Thank you.

* * *

Goldson:

Thank you, Madam President. I just want to bring up two other points. Again, they asked us – these contracts were approved with this money in it, based on a year ago. They told us this is what they need based on previous contracts. Were now 8 months into the contract 9 months into the contract, they have not provided any information to show that they have used the money that they have, much less ask for more. They didn't give us any examples except for the cameras, of why they want the additional money except just in case something happens. But they can always come back to us and get approval um for whatever happens. We don't know how much of this money in the waste contract that they've already spent. So we don't know that they need another \$8,700. It just so happens that—my second point—it just so happens that that 8700 came from an African American contractor. Now I think that—I certainly believe that the snow contract should be reduced because we haven't gotten any snow. I don't think we're getting any. But instead of just giving it back to the general fund, they go and give it to another contractor. Out of city contract, who—who—who-- who hasn't proven that they've used what they already have. They certainly—trash pickup there ain't gonna be no emergencies in trash pickup. They will know in advance whether they're going over—we're not going to have somebody dump \$8700 worth of trash on our school prop over the last two or three months so that's not an emergency so there's no reason to really add that. It's not reasonable. Um and again I hate to [indiscernible]—but the last two meetings that we've had now, we've taken funds from a black contractor and given funds to a non-black or brown contractor. And you can—you know, that's a fact. You can't argue against that. You can make other excuses why it's done. But you can't argue that that has been done. It's been done...

Wilcox:

Point of order.

Rivera:

Mr. Wilcox.

Wilcox:

We have—our bylaws state that board members are not to malign or assign intentions to—

Goldson:

I haven't.

Wilcox:

—to staff members I would certainly be able to,

Goldson:

I haven't.

Wilcox:

—if you would like. Pull the information from our bylaws.

Goldson:

I haven't. I haven't. I haven't maligned anybody. What I said was I don't understand it because we haven't been given enough information.

Wilcox:

Point of order, Madam Chair.

Rivera:

Mr. Wilcox. Mr. Wilcox.

Wilcox:

I, this is the second meeting I've been in where staff are assigned—I'm gonna, as long as I have the floor here, I'm going to---

* * *

Wilcox:

My point of order was that in our bylaws 9325 member of the board or public should—I'm looking for the exact statement here—show the utmost courtesy and respect to other colleagues and staff as to all witness and members of the public in attendance, neither insulting witnesses nor mistreating them in any way and also not to cast personal insults, or etc. impugning the character personality or motives of a colleague, and I would think that a colleague of mine who has been chair of Finance & Operations committee and as well as board president would understand something as simple as a contract that is not to exceed and if we need to I suppose I'm a librarian with a lot of time on my hands, I can go through and look at the number and millions of dollars of these contracts approved in the time of this board over the last several years. This is not new information and I don't see any reason we should be maligning or impugning the character of our staff members. Thank you.

Rivera:

And I agree. We're talking about very specific contracts. We talk about those contracts at a previous meeting it's been voted on and we don't need to keep rehashing the same thing. I'm going to unmute you Mr. Goldson however I am going to remind you if you're out of order I will mute you again.

Go ahead, Mr. Goldson.

Goldson:

Madam President, I was respectful of Mr. Wilcox when he made his point of order. I gave up the floor for his point of order. That's what you do. He doesn't take the floor for making any other points except his point of order. Madam President—Madam President, if he suggested I impugned anybody character I want him to put that in writing so I can know exactly what he's talking about because I didn't impugn anybody's character. I asked a question about why we're spending this money, this way. Waste management—there's no way there's going to be \$8700 more in expense over the next couple of months than what we've already budgeted and if they are, then show us in

writing. We have not been given it to ...[indiscernible]...making decisions without having all of the information. All of the information. We should know how much they've spent so far. We don't know that. We don't know how much that other contractor has spent so far. Yet were making decisions to add more money to their budget that were never going to see again. And we're in a deficit. And were doing the same thing that we're doing year, after year, after year, that I've been fighting year, after year, after year. And it's shameful that a board member would get up and accuse me and doing even point out where I impugned character so put it in writing I'd like to see it before the next meeting. Because I would like to get an apologize when you can't prove that I did it. Thank you, Madam President.

Rivera:

Mr. Wilcox.

Wilcox:

To suggest that staff members are steering business away from African American contractors when in the question tonight, one of the African American contractors had a snow removal contract and we didn't get a lot of snow. To suggest people are doing that as some sort of conspiracy impugns their character and I did not appreciate it so I called it out because we have a bylaw that says it shouldn't happen.

Rivera:

Mr. Goldson.

Goldson:

Madam President, I stated facts. The fact is 8700 was taken from one contract. It was given to another contract. It was taken from snow removal because they didn't have the business. It was given to waste management who hasn't proven that they did the business. And those are operating dollars, so that's not a grant that's not a loan. Those are operating dollars that can go back into our budget and do a whole number of things. So I stated facts. You don't like me stating the facts that a different story. If you think I impugned somebody or made a suggestion that they did steering business that's not what I said. So go back and look at the tapes. I said that is a black business. That business was taken from. And given. You wanna talk about last week's, last meeting's contracts, we could. I don't plan on doing it, but if you wanna raise it, I will. I didn't cast aspersions on any staff member. I stated facts.

Thereafter, the motion carried by a vote of 6 to 1.

* * *

c. The June 8, 2020 Meeting

The recording of the BOE meeting conducted remotely on June 8, 2020 on Zoom reflects the following discussion:

Rivera:

Dr. Whyte, I need to be able if I mention more than once or twice that you're out of order and the person keeps speaking, I need to be able to mute and I don't have that option.

Goldson:

That's how you stop black people from talking. I get it.

Jackson-McArthur:⁹

Mhm.

Goldson:

That's how—that's how we are stopped. Yes. She didn't stop Mr. Wilcox. She was allowing Mr. Wilcox [indiscernible] and I wasn't. . .

* * *

Later, during the portion of the meeting where Mr. Penn was giving his report,¹⁰ the following conversation occurred:

Penn:

Good evening, everyone. And I think everybody is aware, the Board of all, there was a vote for a budget increase of 1.0 million and that was, of course, below the 9.8 million that we had requested, excuse me, the 10.8 million that we had requested. For next year's budget, um, you know, I think to some degree, we sort of saw that coming. But still leaves us now in the uncomfortable position of having to find a fairly significant number of cuts to make to the proposed budget going into next year so that we have a balanced budget for that school year. One thing I will point out is that as painful as it was at the beginning of this year and all the transportation changes there is a pretty significant chunk of the financial benefit from those changes that will carry forward into next year. With a total savings of about 1.8 million so that still leaves about 8 million is still needs to be solidified in terms of reductions for next year. I did provide to the board a board and memo of a lot of the things that we've been discussing over the past, I'd say three months in terms of where some of these savings can come from. We have to go through them. We've talked about returning some of our coaches to the classroom level teaching positions. There are 66 reading, math and instructional coaches or proposing moving about 30 of those back to the classroom. That's a savings I have about 1.9 million. We've talked about reducing certified staff when the enrollment doesn't necessarily justify replacement higher in the wake of a resignation or retirement or a non-renewal. We've been targeting about 30 positions for savings of 1.8 million. We've been productive

⁹ It should be noted that on this date, Dr. Jackson-McArthur's screen name is identified for the Zoom meeting and transcript as "Black Lives Matter." However, for purposes of clarity, I have labeled all statements of "Black Lives Matter" as "Jackson-McArthur".

¹⁰ Mr. Penn's report began at timestamp 2:06:58 per the transcript auto-scroll available on the website where the meeting is posted.

pretty diligently since January to try to manage downward. The new hire cost versus the outgoing cost of the incumbent we're targeting a savings of about \$3,000 per hire for 50 higher. That would net us about 150,000 and we've actually almost hit that. In our last six weeks of hiring. If you go back and you look at general fund positions outgoing salaries versus incoming salaries for the last three sets of blue sheets. So I think that would definitely be there's more upside there. We've talked about adjusting potentially the bell time for the elementary schools that would enable additional transportation savings that's worth about 1.3 million. We're thinking about eliminating to currently vacant central office administrator positions for the budget with a savings of about 325,000. We've talked about not replacing to assistant principals are reasonable to retirement savings of about 290 or 300,000. We are looking at a retirement incentive for certified staff. That's a potential savings and frankly is TBD. I know when it was proposed a few years ago. It was an excess of a million dollars. I did receive a copy of that whole proposal shortly before the weekend, and I'm still winding in my way through that to see what could potentially be a go forward plan for us if we elect to use that we asking each department head or school principal for a 5% reduction in non-personnel costs to see what gets identified that way. I don't think that's going to be about too much more than about 200,000. But at this point, every little bit counts. We are talking about potentially significantly reducing the general fund, fund part time positions we currently spend about \$2.1 million from the general fund for our part time positions. And that excludes what we spend on athletic coaches seasonal positions and teacher stipends, I would be not specifically tied to a number of positions but to a dollar level. In other words, if the board elected to reduce 25% of that amount we would do a pro rata share on the 2.1 million and drive down about a half a million dollars of savings. we've definitely talked about hiring a professional grant writer. That will bring in additional revenue to the district, you started to see some applications come through for that grant writer position. So we're going to try and get them hired as quickly as we can after 7/1, given the board's prior direction. And we've also talked about negotiating to district wide furlough days. And that's worth about \$1.1 million if we're successful negotiating that. So there's a wide range of possibilities that we're looking at. To do this and you will see that there is one that's not on the list. And that's closing a school at this point. In talking with the executive team, frankly, that would seem pre-mature versus waiting for a facility studying to be done next year, which is part of the budget proposal to try to determine, based on demographics, expected growth rates, building condition, prior construction, age of the building and other a lot of other factors as typically goes into a facility study, which one makes the most sense for us to close. And I don't think that's really a 2021 issue. I think that's more a 21-22 issue because frankly I don't think these budgetary issues are going to be going away anytime soon. But that's kind of where we are. And I think this will be something of an iterative process working with the F&O and the full board going forward. And try to determine, you know really what the comfort level is with these for the board so that we can execute them.

Rivera:

Thank you, Mr. Penn, Mr. Goldson.

Goldson:

Thank you, Madam President, Mr. Penn hit the nail on the head that these budgetary problems aren't going away anytime soon I'm based on the kind of decision we just made. Our department,

we just make decisions without I have a question that I had a couple of times I missed the pain. You have on here and transportation savings of 1 million to explain with their savings. Could you explain what that savings was please.

Penn:

Okay, if you go back to the beginning of the 19-20 school year. If you recall, there was a lot of bus stops that were eliminated cause a lot of disruption to the district. There once there were some stops that were added back, but there is still a net reduction of I want to say 26 buses out of the fleet. At the beginning of the 19-20 year. we don't anticipate that those buses will be needed in 21 so that \$1.8 million that we say the result of that change carries forward into the budget for next year as well.

Goldson:

Thank you. Um, I've been hearing from the administration and we don't know the facts yet, but I've been hearing from the administration that we probably have a social-distancing deals where we have to have less kids buses in order to adequately social distance, wouldn't that add to our transportation costs.

Penn:

I think it depends on how its structured, frankly, one of the things that's been bantered around within the group is either doing an A-B day or an A-B week or a similar structure where you'd be able to keep the same fleet of buses that you have, which would reduce the population is riding the buses pretty dramatically. So it—a lot of it will be will be determined by what's the maximum capacity that you can put on a bus.

Goldson:

Okay, so these recommendations that you made were made long before the pandemic hit us. Since the pandemic hit us all of these all almost all of these are probably naught at this point, for instance, um, we're going to have to have less kids in the classroom in your classroom time because we're doing A-B days. Aren't we going to have to have more teachers available because of the fact is that even though those kids are not coming in on the B day, or the A online learning? Is that correct?

Penn:

Dr. Tracey do you want to respond to that because I don't want to get too far ahead of where our plans are at this point?

Dr. Tracey:

Right so Darnell, the thinking are—Mr. Goldson—thinking right now is as we look at this, are these plans. Remember those are just tentative plan. So we're planning right now to have the full bus. Because just like we had last marking period. This is this plan, the government is talking about. Is just germane to the first marking period, which is the fall semester that we call it that, first, so we have to keep the bus fleet in action. In case. Now we have to go back to opening up full amount of students coming to school on the buses. Or it would be, it would be irresponsible if we did not have the full bus fleet, so that when we are ready or the drivers are ready or the buses are ready to go. We are looking at. Yes, a hybrid plan as Plan B because even now the state can go back and say everyone opens back up for capacity. So we're doing a plan A and plan B. And Plan B we sent out a survey to staff the parents and to the community at large. I think we did miss

parents at given in your packet a breakdown as they're thinking around what school openings should look like, whether we're going to do an A, B day and maybe week whether we're going to do a week on a week off or whether or not we want to continue staying at home. It's interesting, the survey results—overwhelmingly almost 50% of parents say stay home which shows the level of fear, almost 50% of teachers say stay at home and continue online learning, but we do know also that there is no way that we can teach Pre-K K one two, our foundational grades, the computers. So we are planning on looking at what that should be developmentally for young for youngsters because at the lower level is play burst and play-based learning. We cannot put little three and four-year-old who are just coming to school and put them on distance-learning ridiculous in my book. At least, that's ridiculous developmentally as an early childhood person It does—it would not even work. To do something like that for young people. So we're looking at some other plans that we're sharing with the state. And I was supposed to get some call back today we missed our calls about what I had shared with the state about getting the younger children back in school. We also had considerations about what should happen to special education students, what should happen to students who are English learners who also need that level of communication to—to get to language proficient—proficiency. If we don't do certain things and meet goals and what is going to happen? We want to have a lot of students already in a district where many students are far behind. We're going to have a lot more students for behind which will be problematic with any grains are the greater we need to focus on.

Goldson:

Thank you, Dr. Tracey. And thank you for that because you just reiterating the point that I'm making is that this—this document that we have this budget document. It's just rehashing pre pandemic. Suggestions for budget mitigation that are not going to not going to fit into the New World, at least, at least for the beginning of the school—school year. So we know that there's not gonna be a vaccination anytime soon. At least, not by the time school closes. So there's no way that anybody is going to approve having what are these kids what kids patent for classroom. Oh, this, this, this is pre Pandemic. We're going to go to achieve. Most of those even before to pick them up these most of these changes with suspect anything. I mean, a time in the center point. We know that doesn't work. We couldn't get enough of them to sign up for furlough days is gonna be a fight. Somebody other things that we talked about it just kind of pie in the sky. We hope we wish we could do it. This is what we can do this, so we can say that we did it. We're likely not going to be able to do most of it so and now when we are now on June 8 yr ends in 22 days. The next fiscal year—I mean, the next fiscal year starts at 23 days. We still don't know. We still don't have a plan. This deficit is over in 22 days right it carries over into the 20- 21 year along with the built in deficit we have there and we don't have a plan to reduce it. How do we do not have any plan whatsoever. And I know

Penn:

I really have to disagree with that character—

Goldson:

Uhh you're not going to interrupt me again. I know you have privilege. I know you have privilege. But you're not going to use that privilege on me anymore.

Dr. Tracey:

Who are you talking to?

Goldson:

Whoever interrupted me. He knows who he was. I'm not going to mention his name.

But you're not going to interrupt me again.

Rivera:

Darnell please. Please continue.

Goldson:

I'm really concerned that we were going to really don't have a good grasp on how we're going out. We're going to fix it. Yeah. And I don't think we should be trying to fix it on it. I don't think that we should be sacrificing our teachers and our students to fix a deficit should exist in the first place because we were underfunded. Is that we have to put together a lobbying plan to put those who are responsible on the table to make sure that we get the kind of funny. We have, I don't want to sit here and speak for four hours about how many teachers, we should cut we shouldn't be any teachers. We shouldn't be part timers that worked in the classroom. Our students, we should be fighting for more money and you should be put our energies and we're not doing faculty for Sony study we closed we merged three schools and close it. Additional school with four months of planning for multiply that it worked perfectly smooth kids that were closed school at 87% of them kind of to their first choices. Didn't have any major problems after that merger worked well could have it could have been a little better but it works well. Now were talking about two years of studying to possibly close another school which can save us like \$2 billion.

* * *

Dr. Tracey:

Yes, I'm saying that that I'm going to ask, though, that this board be respectful to my staff and publicly and it was...

Goldson:

Respect the board members. [indiscernible]

Dr. Joyner:

You're interrupting.

Rivera:

Mr. Goldson, You're interrupting.

Dr. Tracey:

So I'm gonna take that...we have been of course some of the plans we had were pre-Covid and some of those plans are still in place, even though they were pre-Covid. We are not planning to have expanded amount of teachers, but there's no way the system would be broke. If we were to get extra teachers in to teach according to what the state is saying, I'm saying here that the state is re-examining the plan. And we will get from them, which will guide, a lot of what we do in our school system because they're now looking at what the large school systems will be faced with and the implications because we are not small towns or small districts like other districts that have ...one is school one middle and a few elementary schools. We are 41 school strong. With 10 high schools. So we are sharing through Fran Rabinovich of cost sharing with the state, the problems

and the challenges that the large school systems will have should we have to abide by any of those guidelines that are coming down. And they are examining those things.

I think in good faith in good faith, the team came up with some considerations. These are key considerations and in good faith, we're presenting to the board these key consideration that we're thinking. If—which means that if there are other additional information that we can get—and there is no way we can close the school at this time impossible and a lot was contingent upon how the board of alders. We're going to pass what the mayor had asked for, for the public school system, having received that information just about a week ago. We still have to continue planning, we still have to go through putting some ideas on the table. But let me, let me see, which we're not the only school system that is challenge right now with fiscal issues we're not the only ones check Bridgeport check Hartford check every one of those Large school system. And we're saying the same thing. And everyone is asking, what are you doing New Haven? What are you, doing in New Haven? So the fiscal challenges are great. And there's no easy fix. I'm going to say that there is no easy fix to the fiscal challenges. And I hear Darnell, because he's been saying this for quite a while about lobbying our state legislators and—we can lobby, but there's no way we can force them into action, because guess what, when they go in front of the state. They have the other smaller districts that have a lot more voting power than the few urban districts that we have. And so they have to reasonably and strategically lobby for what New Haven may need. So it's not like we cannot push our way and say that they're going to be able to do this, no matter how much we say even on the board of alders. They were to give what they believe they can give. There's no pushing in and say we need this. We need. So therefore, given it doesn't happen like that. At least from my point.

* * *

Dr. Joyner:

Well, my thinking is that it's a good thing that we started some of this stuff in a pre—pre-Covid era. And I would argue that the principles that must have been applied are consistent with probably the most prestigious organization, the Government Finance Officers Association and ... essentially we're cutting away from the Central Services. We're trying to protect the core of services that we provide. I don't think it's fair to berate him or anybody's fault far as that's concerned. He's a highly competent professional and... someone who works very hard to give us the very best that he can give us in the way of proposals. And I would hope that given that he is following those principles and I would suggest any board member go online and look up the GFOA and look at their, their guidelines for budget reductions. And you'll find that what what Mr. Penn has done as well as what the mitigation group did is consistent with the highest ranking authorities in that particular field. And... is certainly fluid and it gives us opportunities to as time goes on in this dynamic environment make adjustments and changes. We really are in uncharted waters. And when we're in uncharted waters, we, we need to make sure we can keep the ship as orderly as possible.

Rivera:

Thank you, Dr. Joyner. Mr. Goldson.

Goldson:

Thank you. Let me be clear. I did not berate Mr. Penn because of his budget memo. I disagreed with him that I thought it was going to be successful. I did not berate him. What I did berate him

on was interrupting me while I was speaking. And I thought it was rude. It was out of place. And it actually showed a little bit of privilege, because it's not the first time it's been done. But I'm hoping that it will be the last. So again, on our part, we count on our professionals to give us good information so that we can make very good decisions for this district. And I know today, that we are two more million dollars in the hole because our professionals gave us advice on something that did not pan out. He told us that wasn't going to cost us a dime to do this food program and it put us \$2 million in deficit. That's a fact. You can argue against it you can say I wasn't doing the right thing you can do whatever you wanna do the fact is there on the record saying this isn't going to cost us money and it cost us \$2m. So—So yes, I'm going to continue to ask questions to point out what I think is wrong you consider that berating, you do that. I am not taking their word on yours or anybody else's as gospel because you've proven time and time again that that gospel, isn't gospel, okay? You explain to me how we're \$2 million in the hole, but we were told was going to cost us nothing. You give me a good explanation for that. Then I mean—I may not ask any additional questions. I did not berate this man and I'm tired of you folks...every time I ask a question or I bring up an issue, you talk about I'm berating somebody. Just a couple of weeks ago, one of the board members said that I was accused someone of being racist. And I still haven't got an apology for that. And I expect to get one. Because that privilege is not going to come through either. So when I ask a question, you're not to question my motivations or my motives. You're gonna either answer the question or you're going to ignore it. Thank you, Madam President.

Rivera:

Dr. Joyner.

Dr. Joyner:

I'd like to make a correction about the Food Service Program. I think Dr. Tracey gave an explanation regarding that. And of course, it, it has not cost us \$2m. First when we started off, we start off with cash balance and I think she also indicated that because we didn't serve the number of students that we had served in the past that that also affected it. So it's a lot more complicated than what has been said and—and the interest of moving forward.

If we could just give us sort of written explanation that would reveal the true figure and that not tonight because people need time to get information together so that we don't

Go out here having people think that because we tried to serve food to kids and families and one of the most catastrophic periods in American history, that all of a sudden we did something wrong. And I'm—But I'm glad to see this heightened scrutiny on how we spend money.

Because I think it would bear fruit for us in the future as we look at how we spent money in the past and certain contracts and what have you. So I think we should do that and—so that we can do a better job as a school district, because we now have a CFO, whose highly competent qualified and we can we can actually make amends for some of the mistakes that we've made in the past, regarding expenditure of public funds.

* * *

Penn:

Sure, so first, Mr. Goldson, I apologize for interrupting you. That was inappropriate. And you're muted, but I think you said—something—

Goldson:

Thank you.

Penn:

Let me say this. Like any other piece of advice you can choose to follow it or not. You hired me as a CFO to try and put together a way of solving the deficit for this year. I think we've done a really good job of that. Looking forward into next year, you have a set of recommendations of what I would do if I was the board member or what to do to going forward. Like a piece of advice that you get from your doctor or from your attorney. You can either choose to follow the advice or not follow the advice. Right? Even they may tell you to not eat red meat. But if you happen to like hamburger, you're probably going to have the hamburger anyway. Right? In the same vein, this is what I would recommend at this point. And we just try and clarify something about the Food Service Program, the food service programs incurred deficit of about \$2 million during the quarter when we were shut down for COVID. That is a true statement. The Food Service Program also started the year with a \$1.9 million surplus excess cash that have earned over prior years that potentially can be an offset to that. So we have not actually been asked to fund the full \$2 million deficit. One of the things we wanted to go back and do to see, is there something that we can do to mitigate that for FEMA or other relief that we had available to us. So there's actually not been a request made to fund any of that deficit yet. And with respect to the loan, what I was referring to in the F&O meeting was if you write a check to the Food Service Program, that money is gone the day you write the check. If you structure it in a loan between the general fund and the Food Service Program, you have the ability to have the money come back. So that was the recommendation, so that it's, we're going to loan you \$500,000 to cover your expenses for the first couple of months of the program, until your revenues are up and running again and by December 31st, you're going to run, you're going to pay that \$500,000 back to the general fund. That's the only reason we were suggested the loan. I've actually done something similar that in a poorer in a in a program where I had been before. But the key is to have the loan agreement in place, because if you don't have the loan agreement that's where you get into trouble with the federal government because they see it as it wasn't really a loan. You made a contribution of the program and that's where it should have stayed. Thank you.

* * *

Goldson:

Mr. Penn, um, I think you misunderstood my comments my comments. It's not that I don't appreciate your advice. What I'm asking for is more advice because I don't think it's enough what we have there. That is the point that I was trying to make. The second point that I was trying to make is, if we as a board lead to take on Sarah Miller said we need to start lobbying against these deficits. We need to make sure that the funders are clear about why we have these deficits, is because of their activity. And I think we also need to consider what we talked about at the beginning of the year and just seem to be some, some, some traction on our board members is that we should consider what are other options are legally around this this budget deficit. Why is, why does, Hartford get more money than New Haven when we have the same number students. Why is Bridgeport getting more money than New Haven when we have about the same number of students, We need to look at how fair that we are being treated or not being treated—treated by

this—by this—by the state government. So those are the points that I was trying to make. I wasn't saying that your proposals are good proposals. We've been talking about three, four months. I'm just saying that they're not good enough and I'd like to see more. Thank you very much Madam President.

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d. The August 24, 2020 Meeting

The recording of the BOE meeting conducted remotely on August 24, 2020 on Zoom reflects the following discussion:

Rivera:

Alright, so moving on to the president's report. I'm—I'm going to make a motion to postpone the agenda item regarding discussion of Tinley, Renehan & Dost, LLP investigation to a date certain of September 28, 2020. This agenda item was added at the request of Mr. Goldson as it involves an ongoing investigation of unsubstantiated allegations I'm moving to postpone.

Goldson:

You say that. Yeah.

Rivera:

I said Mr. Goldson, and I'm moving to postpone the discussion on to the next until September 28 meeting. Upon the conclusion of the investigation and may then be appropriate to report to the Board, maybe an executive session under Section 1-200(6) at the moment will allow time for the completion of the investigation for the protection of anyone involved.

Joyner:

Second.

Goldson:

I still don't understand. My lawyer has been contacting your lawyer and no one will tell us what this is about. I mean, this is worse than the Birks thing. At least I had some I had a suspect. And I had an accusation. This one I don't even have a suspect or an accusation. You guys have been going around for weeks, saying that I'm investigating. You having a lawyer contact me by certified mail telling me I'm investigated.

Dr. Joyner:

We have a—we have a motion.

Goldson:

And I'm speaking to the motion. I'm speaking to the motion because it affects me. And this is just a terrible, terrible attempt to try to stop my advocacy. Again, you tried it before you failed. I'm surprised you were s—silly enough to try it again. And I'm telling you this time when it's over, it won't be over because I'm going to make sure that I get my due justice. Whoever it is that ever has launched this investigation, for whatever reason, will pay the price for putting my name out there in the public again and a negative way. Thank you.

* * *

Based upon our witness interviews, review of the relevant meeting recordings and documents, we have found the facts set forth below.

IV. Factual Findings

1. The City Charter provides for a Board of Education consisting of the Mayor, and four (4) members appointed by the Mayor, subject to approval by the Board of Alders; and two (2) elected members serving overlapping four-year terms.¹¹
2. Mr. Goldson is one of the two elected members of the BOE. Dr. Joyner is the other.
3. The BOE is responsible for the control and management of all public schools in the City.¹²
4. The officers of the BOE are its President, Vice-President and a Secretary. Since its first meeting in January 2020, Yesenia Rivera has served as the BOE President. Prior to Ms. Rivera's term as BOE President, Mr. Goldson served in that role. Pursuant to the Bylaws, Ms. Rivera is responsible for the orderly conduct of the BOE meetings, recognizing persons who desire to speak, and protecting the speaker who has the floor from disturbance and interference.
5. Mr. Penn is the CFO of NHPS. He reports directly to Superintendent of NHPS Dr. Iline Tracey. Mr. Penn's employer is therefore, the City of New Haven. As part of Mr. Penn's duties, he presents information concerning the NHPS budget at the BOE meetings and is available for questions of the BOE.
6. The BOE is governed by Bylaws adopted on May 29, 2018, during Mr. Goldson's tenure as BOE President.
7. At the time Mr. Goldson made the above statements concerning contracts with outside vendors of legal services on March 23, 2020, he was informed on the record and had personal knowledge that these contracts are "not to exceed" contracts, where contractors are paid based upon hourly services provided. Mr. Goldson is a past chair of F&O Committee; he was the BOE President at the time these contracts were approved; and his signature appears on the contracts. Accordingly, he was aware of the contract terms and of the nature of a "not to exceed" contract.
8. As also discussed on the record, the reduction in the amount of funds encumbered by the "not to exceed" contracts was based upon the expectation that the full contract amount

¹¹ BOE Bylaws, Sect. 9000.

¹² BOE Bylaws, Sect. 9040(a).

would not be expended during the fiscal year. Such reductions are internal accounting adjustments made to ensure that the budget is a sound reflection of anticipated actual expenditures. These internal accounting adjustments did not change or amend the contracts with the legal vendors and did not require board approval.

9. The approval of a \$40,000 increase to the purchase order for Berchem Moses, to a total “not to exceed” amount of \$120,000 was passed at a prior F&O committee meeting.¹³ This change required Board approval because the original contract with Berchem Moses contained a term that the services required were in an amount “not to exceed” \$80,000.00. The matters being handled by Berchem Moses included both special education matters and what are referred to as “legacy” cases, *i.e.*, litigation cases carried over from the prior year. Therefore, it was determined that an amendment and upward adjustment was necessary. Mr. Goldson did not contest these facts.
10. To illustrate where those additional funds would come from, Mr. Penn explained and provided documentation¹⁴ that the budget line items within the overall “legal spend” would need to be adjusted internally to reflect accurately the actual expenditures of the municipality.
11. Mr. Penn was unaware of the race of Attorney Martyn Philpot until the March 23, 2020 BOE meeting, when Mr. Goldson made the statements excerpted above.
12. Attorney Philpot’s contract with the City of New Haven was not altered or reduced in any way. The original contract for services between Attorney Philpot and the City of New Haven remained unaltered for the entire term.¹⁵
13. At the time of the March 23, 2020 BOE meeting with the end of the fiscal year approaching, more than \$50,000 of Attorney Philpot’s “not to exceed” contract amount had not been expended. Accordingly, no funds were “taken from his [Attorney Philpot’s] pocket” as stated by Mr. Goldson. The budget adjustment discussed merely unencumbered funds that were not expected to be expended under Attorney Philpot’s contract during the budget period and reallocated those funds internally for the anticipated expenditures under the Berchem Moses contract.

¹³ See Action Items, Agreement 3 for March 23, 2020 meeting of Board of Education.

¹⁴ A copy of the spreadsheet showing the proposed budgetary encumbrances is attached hereto as Exhibit E.

¹⁵ A copy of Martyn Philpot’s contract is attached hereto as Exhibit F. There is no claim that Martyn Philpot has rendered services that remained unpaid as a result of the internal adjustments to the budgetary line items discussed herein.

14. In addition to unencumbering funds the increase “not to exceed” amount of the Berchem Moses contract, Mr. Penn suggested that the Board reduce the amount of funds encumbered for anticipated services under a Shipman & Goodwin contract.
15. Pursuant to Connecticut statute all municipalities are required to follow Generally Accepted Accounting Principles (“GAAP”).¹⁶ Adherence to these principles and fulfillment of government’s duty to be publicly accountable requires that budgeted expenses accurately reflect best estimates of anticipated actual expenditures. The reallocation of budget line items that are not expected to be used within the budget period is consistent with these principles.¹⁷
16. All legal services contracts discussed during the March 23, 2020 BOE meeting were “not to exceed” contracts, wherein there is a specified ceiling, or maximum amount of the cost of the legal services approved under the contract. Each contract has a specific hourly rate, set by the contractor, at which the services are provided. Therefore, to the extent that a legal contractor does not provide the hourly services up to the maximum amount, funds are neither billed nor paid to the contractor. It is only through the provision of services that the legal contractor is entitled to payment. Unused funds are either returned to the general fund or, as was done here, transferred to other accounts.¹⁸

¹⁶ See Conn. Gen. Stat. Sec. 7-394a.

¹⁷ The Governmental Accounting Standards Board (GASB), an independent, private-sector organization based in Norwalk, Connecticut, establishes accounting and financial reporting standards for U.S. state and local governments that follow Generally Accepted Accounting Principles (GAAP). GASB’s Concepts Statement No. 1 reflects the fundamental principles noted above as follows:

The Board believes that financial reporting plays a major role in fulfilling government’s duty to be publicly accountable in a democratic society. Public accountability is based on the belief that the taxpayer has a right to know, a right to receive openly declared facts that may lead to public debate by the citizens and their elected representatives. Use of financial reporting by citizens and legislative and oversight officials to assess accountability is pervasive and is implied in the uses noted above. The Board also believes that financial reporting should provide information to assist users in assessing inter period equity by showing whether current-year revenues are sufficient to pay for current-year services or whether future taxpayers will be required to assume burdens for services previously provided.

Governmental Accounting Standard Series, *Concepts Statement No. 1 of the Governmental Accounting Standards Board* (May 1987), Summary, p. ii. (available at: www.gasb.org/blobserver).

¹⁸ To illustrate this point, a hypothetical may be helpful. Assume that the legal services contract for Attorney A sets forth a “not to exceed” limit of \$100,000. Assume the attorney bills at \$200 per hour and bill for 100 hours of time over the contract term. Attorney A would be paid \$20,000, for 100 hours of services, rather than the full “not to exceed amount” of \$100,000. If another legal contractor, Attorney B, is expected to exceed the upper limit of her contract, the municipality may reallocate the unencumbered excess of Attorney A’s contract in order to cover the increase in Attorney B’s contract without increasing the city’s overall budget for legal services.

17. The scope of Attorney Philpot's contract included the following specific areas of legal services: "general legal advice/opinions, contracts/leases, expulsions, personnel investigations, litigation defense, administrative hearings, including but not limited to Commission on Human Rights and Opportunities."¹⁹
18. As of the date of this meeting, New Haven Public Schools had closed their doors to the public and students for the remainder of the academic year.²⁰ Therefore, expulsions were not likely to occur, eliminating the needs for expulsion hearings, which comprised the majority of Attorney Philpot's anticipated services. Therefore, it was determined that most of the remaining funds encumbered by Attorney Philpot's contract were not likely to be used by the end of the fiscal year.
19. All decisions with regard to reallocation of unencumbered funds from various legal line items were made after consideration of whether the funds would be used, in an effort to keep the overall legal spend to \$400,000 and avoid any additional increase in the overall budget deficit. Any adjustments could be reevaluated prior to the end of the fiscal year as needed.
20. The original snow removal contract with Tim's Enterprises, LLC, a minority-owned contractor, remained in effect for the entire contract term. Mr. Goldson's statements on the record reflect that he believed the "contract should be reduced because we haven't gotten any snow" although, as explained, there was no change to the contract itself.
21. All decisions with regard to reallocation of unencumbered funds from the snow plow contractor were made after consideration of whether the funds would be used.
22. Mr. Goldson sent an email to the Board dated May 16, 2020²¹, which made reference to "white privilege" containing a link to an article describing an interchange in which Mitch McConnell told Barack Obama "to keep his mouth shut." Mr. Goldson's email suggested that if it were Bush, Bush, or even Clinton, such conduct would have never happened. Mr. Goldson's email further stated that "white privilege[] has no limits". Mr. Goldson wrote "while I am emboldened by this disrespect to our former president I am going to keep speaking out whether certain folks are happy or not."
23. On Saturday, June 6, 2020 at 11:22AM, Mr. Goldson sent an email to Mr. Penn, posing questions about the financial materials for the upcoming meeting. Mr. Goldson sent another email to Mr. Penn at 12:43PM with additional questions. On Sunday, June 7, 2020 at 11:21PM, Mr. Goldson sent a third email to Mr. Penn regarding those same questions.

¹⁹ See Exhibit A appended to Exhibit F (Philpot Contract, FY 2019-2020).

²⁰ New Haven Public Schools closed on March 13, 2020 due to the coronavirus "COVID-19" pandemic.

²¹ Copy attached hereto as Exhibit G.

At 1:07AM on Monday, June 8, 2020, Mr. Goldson sent another email regarding the same questions. The emails contained questions of Mr. Goldson himself, not questions reflecting the consensus of the BOE.²²

24. On June 8, 2020, Mr. Goldson made a remark to Mr. Penn on the record that he knew Mr. Penn has “privilege” and that Mr. Penn would not be using his privilege against Mr. Goldson “anymore.”
25. The conversation between Mr. Goldson and Mr. Penn at the June 8, 2020 meeting where the above exchange occurred was regarding the Food Service Program and its impact upon the NHPS budget. The Food Service Program did not cause a \$2,000,000 deficit as stated by Mr. Goldson. The deficit increased by \$292,031 as a result of the Food Service Program, based upon the calculations and information submitted by Acting Controller Michael Gormany to the F&O committee on September 8, 2020.
26. Mr. Goldson’s comments concerning the investigation on August 24, 2020 suggested that the identity of the complainant and the nature of the complaint under investigation were withheld from him. This is not correct. We invited Mr. Goldson, through his counsel, to participate in the investigation on two separate occasions. Attorney Williams confirmed in writing that his client did not wish to participate in the investigation. During the pendency of the investigation we were not asked who the complainant was or the nature of the investigation, either by Attorney Williams or anyone else, until we interviewed Mr. Conaway on October 2, 2020. Upon being asked by Mr. Conaway, we specifically identified the complainant and stated the nature of the complaint.
27. Both upon providing initial notice to Mr. Goldson and after sending emails to Dr. Tamiko Jackson-McArthur and Mr. Larry Conaway, the media attempted to contact us. We did not respond. We are aware that there was a press conference and protest staged outside of Mr. Penn’s office building on October 7, 2020 after the identity and nature of the complaint was disclosed to the press by other sources. Mr. Penn was in his office building at the time of the conference. Since that time, he has not attended a BOE meeting and has continued to work from home.

²² Copy attached hereto as Exhibit H.

V. Legal Analysis

1. Relevant Provisions of the Board of Education Bylaws and Code of Ethics and the City of New Haven Ordinances and Charter

The following sections of the BOE Bylaws are pertinent to our factual findings and conclusions:

Section 9020 Public Statements

Once a Board decision has been reached, all Board members shall abide by that decision until it is amended or rescinded by subsequent Board action.

Section 9271(f) Prohibited Practices

(h) No New Haven Board of Education member or New Haven Public Schools employee shall take any action in retaliation against any person who makes a complaint or allegation of unethical conduct in accordance with the procedures outlined in this chapter with regard to the standards of conduct delineated herein.

Section 9271(k) Standards of Conduct²³

(c) New Haven Board of Education members and New Haven Public Schools employees shall refrain from abusive conduct, personal charges, or affronts upon the character, motives, or intents of other New Haven Board of Education members or New Haven Public Schools employees, or of members of the public.

(e) Recognizing the value of boards, and commissions, and task forces in the public policy decision-making process, New Haven Board of Education members and New Haven Public Schools employees shall refrain from using their public positions to improperly influence the proceedings, deliberations, decisions, actions, or administration of any board, commission, or task force.

(h) New Haven Board of Education members shall not interfere or seek to interfere with the duties or responsibilities of other New Haven Board of Education members or New Haven Public Schools employees over whom they do not have supervisory authority and responsibility.

(i) New Haven Board of Education members shall support and contribute to the maintenance of a positive and constructive workplace environment. Recognizing their special role in the public trust, New Haven Board of Education members shall refrain from inappropriate action toward other New Haven Board of Education members, New Haven Public Schools employees or members of the public.

²³ These same standards of conduct have been set forth with regard to public officials and municipal employees more generally in the “Ethics in Local Government” Ordinance, codified at Title III, Chapter 125/8-4 “Standards of Conduct” (Ord. No. 1561, 12-17-07).

Section 9325(a) Meeting Conduct/Public Participation at Board Meetings/Guidelines for Board of Education Members and Members of the Public Conduct

The following guidelines shall apply in regulating the conduct of members and the public toward each other, particularly at Board of Education meetings and Committee meetings. It is recognized that every effort should be made to resolve such instances of alleged disorderly behavior by a Board member or a member of the public through quiet and informal means.

However, gross failures to conduct oneself within these guidelines may be cited as grounds for holding a board member or a member of the public in contempt of the Board of Education for interfering with a specific colleague or the entire body's ability to discharge its legislative duties.

A member of the Board and members of the public shall:

- (A) refrain from speaking or acting, by oneself or in concert with others, in a manner which disturbs, obstructs or interferes in any way with the performance of another member's sworn legislative duties;*
- (B) fully cooperate in both word, action and spirit with the will of the Board and the Committee in making all efforts to see that the meeting is conducted in a civil, decent and respectful way that brings honor to the body and allows it to conduct its business in a courteous, efficient, parliamentary manner;*
- (C) only speak when recognized by the presiding officer, shall be germane and confine remarks strictly to the matter under debate, shall follow the rules of discourse as stated in the existing Rules of the Board, and shall promptly cease any and all debate of a matter when such debate has been concluded and the matter has been disposed of by the body;*
- (D) acknowledge and obey all directives and minor reprimands made or upheld by the President or Committee Chair as a "point of order," and shall abide without further discussion or complaint after losing an appeal to the full Board or Committee;*
- (E) show the utmost courtesy and respect to other colleagues and staff, as well as to all witnesses and members of the public in attendance, neither insulting witnesses nor mistreating them in any way;*
- (F) not act in such a way as to inflict or in any way cause physical harm or to threaten bodily harm or any type of retribution or intimidation through use of menacing language or action;*
- (G) not engage in violent, tumultuous, threatening or deceitful or fraudulent language or behavior;*
- (H) not cast personal insults, racial or religious epithets or any other derogatory remark, slur or falsehood which in any way attempts to impugn the character, personality or motives of a colleague;*
- (I) not speak in abusive, improper or obscene language or make any obscene or improper gesture; and*
- (J) not make unreasonable noise or by intention distract or harass another.*

The New Haven BOE is vested with power pursuant to the City Charter.²⁴ Some of its members are elected through municipal elections and some are appointed. The duties of the BOE include adopting and amending budgets for the New Haven city schools, whose funding is derived principally from municipal taxpayers.²⁵ Therefore, for purposes of the discussion herein, the BOE will be considered an agent of the City of New Haven.²⁶

2. Whether Mr. Goldson's Conduct Constitutes Harassment or Violates Any Federal or State Statutory or Common Law Obligation of the City

A. Conduct Defined

In order to answer the question posed above, we must first determine whether Mr. Goldson's actions and statements are his individual acts or whether they are acts of City or the BOE. Based upon our investigation, we have concluded that the statements and actions reflected above were not authorized, adopted or otherwise approved as official acts or statements of the City or the BOE. Further, Mr. Goldson, as an elected BOE member, has a constitutionally protected right to express his opinion on matters of public concern which come before the BOE. In his role as a BOE member, Mr. Goldson does not direct Mr. Penn in the execution of his daily activities as an employee and does not directly control any terms and conditions of Mr. Penn's employment. Therefore, the statements and conduct in question are not properly attributable to the BOE or the City.²⁷

However, it is recommended that the BOE make clear, either by resolution or public pronouncement, that statements or acts of an individual board member, such as Mr. Goldson's, are not the statements or acts of the BOE unless specifically authorized, adopted, or otherwise approved as official statements or acts of the BOE. We would also advise that legal responsibility of the BOE and the City may arise if, although they do not directly condone or adopt conduct

²⁴ City Charter, Art. VII, Sect. 2,3.

²⁵ Local property taxes are the largest source of revenue for public schools (58%), followed by state taxes (37.8%), and federal taxes (4.2%). (Source: <http://ctschoollfinance.org/faqs>).

²⁶ Although a municipal board of education is a separate independent legal entity from the municipality itself, action by a board of education may, in many instances, constitute action by the municipality and potentially expose the municipality to liability. *See Bd. Of Educ. Of Town and Borough of Naugatuck v. Town and Borough of Naugatuck*, 843 A.2d 603 (Conn. 2004); *see also Cahill v. Board of Education*, 444 A.2d 907, 912 (Conn. 1982); *Town of Cheshire v. McKenney*, 182 Conn. 253, 258-60, 438 A.2d 88, 91-92 (1980). *See also Hernandez v. Enfield Bd. of Educ.*, No. 3:19-CV-1907 (MPS), 2020 WL 4816457 (D. Conn. Aug. 19, 2020).

²⁷ Pursuant to Section 9000 of the Bylaws of the BOE "[t]he New Haven Board of Education, as an agent of the State, exercises those powers and duties expressed or implied in the laws and regulations of the State. The Board alone bears the responsibility for the education program of the New Haven Public Schools. Structurally, the public educational system of the City of New Haven is a department of the City which is under the management and control of a Board of Education."

constituting harassment of a city employee, they become aware of such conduct and allow it to continue and to become pervasive, such that it creates a hostile work environment.²⁸

A clear distinction must also be drawn between the legal responsibility of the BOE or the City for Mr. Goldson's statements or conduct and the BOE's right to take appropriate action to control the conduct and decorum of its meetings pursuant to the BOE's bylaws, which define standards of acceptable conduct for board members.

This report discusses below the applicable federal and state statutory and common law principles and identifies the steps which we recommend the BOE and the City take to address inappropriate or harassing conduct.

B. Relevant Principles of State and Federal Law

The First Amendment of the United States Constitution says "Congress shall make no law . . . abridging the freedom of speech." Originally, the First Amendment (and the nine others that make up the Bill of Rights) were only applicable to the federal government. However, through a process and doctrine called "incorporation",²⁹ certain portions the Bill of Rights, including the right to free speech³⁰, have been made applicable to the states. While seemingly unrestricted based upon the text of the First Amendment quoted above, there have been several cases which, over the course of time, have clarified the scope and breadth of our First Amendment rights.

The United States Supreme Court has held that legislators do not forfeit their constitutional rights to speak out on public issues and served to reaffirm the principle that although speech may be controversial, political speech still falls within the protections of the First Amendment.³¹ Speech dealing with matters of public concern is offered great protection. Speech deals with matters of public concern when it can be fairly considered a relating to any matter of political, social or other concern to the community or when it is a subject of general interest and of value and concern to the public.³² The speech on public issues is entitled to special protection because it serves "the principle that debate on public issues should be uninhibited, robust and wide-open."³³ In order to determine whether speech is of public or private concern, it is necessary to look at the "content, form, and context"³⁴ of that speech.

²⁸ This report suggests what actions should be taken by the BOE to address the past conduct as well as any potential conduct in Part III, Section 3.

²⁹ Incorporation or "selective incorporation" is the process through which the Supreme Court incorporated certain parts of each amendment. A majority argue that the textual basis for incorporation is through the due process clause of the Fourteenth Amendment while others argue that the Privileges and Immunities clause is the more appropriate basis.

³⁰ *Gitlow v. New York*, 268 US 652 (1925).

³¹ *Bond v. Floyd*, 385 U.S. 116 (1966).

³² *Snyder v. Phelps*, 562 US 443, 131 S. Ct. 1207, 1216, 179 L. Ed. 2d 172 (2011).

³³ *Id.* at 453.

³⁴ *Id.*

Primarily, the content of Mr. Goldson's speech at issue attempts to address matters of public concern. While it can be argued that the delivery is less than "refined social or political commentary"³⁵, the content of the speech seeks to question the expenditures of the BOE budget. It is undoubtedly Mr. Goldson's duty and responsibility to scrutinize the way in which those monies are spent on behalf of the voters who elect him and NHPS in general. Therefore, we assume, for purposes of this analysis, that his speech addresses matters of public concern. While his speech in this context may be afforded some protections by the First Amendment, such protections are not without limits. Therefore, we must not only keep in mind the First Amendment considerations above, but also that the First Amendment does not create impenetrable armor against all tort claims simply because speech involves matters of public concern.³⁶ One example of this is speech which constitutes actionable defamation, something that has also been examined by our courts in the context of employment cases.³⁷ Every person is entitled to their good reputation until they forfeit it through their own misconduct. A good reputation carries value,

³⁵ *Id.* at 454. ("While these messages may fall short of *refined social or political commentary*, the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our Nation, homosexuality in the military, and scandals involving the Catholic clergy—are matters of public import.") (emphasis added).

³⁶ See *Gleason v. Smolinski*, 319 Conn. 394, 416–17, 125 A.3d 920, 939 (2015). The Court reasoned as follows:

We agree with the Alaska Supreme Court's recent rejection of the "sweeping" argument that all "speech involving a matter of public concern is inactionable" under *Snyder*, and emphasize that the first amendment is "not an all-purpose tort shield." (Internal quotation marks omitted.) *Greene v. Tinker*, 332 P.3d 21, 34–35 (Alaska 2014); see also *id.*, at 35 (no first amendment absolute privilege to accuse hospital employee of breaching medical privacy). Indeed, as the Supreme Court has observed in acknowledging the possibility of "contriv[ance]"; *Snyder v. Phelps*, *supra*, at 455, 131 S.Ct. 1207; the first amendment cannot be used as a cloak or veil for intentionally tortious conduct that is only tangentially related to the claimed matter of public concern. See *Holloway v. American Media, Inc.*, *supra*, 947 F.Supp.2d at 1261–65 (first amendment did not, as matter of law, shield tabloid *417 newspaper from intentional infliction of emotional distress claim in light of allegations that it knowingly and maliciously published false information about death and burial of plaintiff's missing daughter, given preexisting animus between parties); cf. *United States v. Sergentakis*, United States District Court, Docket No. 15CR33 (NSR), 2015 WL 3763988 (S.D.N.Y. June 15, 2015) (defendant's accusations that victim had engaged in child molestation and animal cruelty could be protected under first amendment in other contexts, but not in cyberstalking and witness retaliation case wherein they were "thinly veiled" revenge for victim's cooperation with investigation that led to defendant's guilty plea on other charges); *People v. Little*, Docket No. 4–13–1114, 2014 WL 7277785, *7 (Ill.App. December 22, 2014) (The court rejected the defendant's argument that the state stalking statute was unconstitutionally overbroad under *Snyder* because the "preexisting relationship and conflict [between the defendant and his wife] strongly suggest [the] defendant is attempting to mask an attack on [his wife] over a private matter as a protest of a matter of public concern," namely, his claim that he was protesting her decision to get an abortion, and "[n]othing in the evidence suggests that in driving by [the women's shelter], [the] defendant intended to peacefully protest a matter of public concern in a public forum. This is particularly true when, in his own testimony and in statements to police, he denied intentionally driving by [the women's shelter]," and "nothing in the record demonstrates [the] defendant intended to 'convey his position on abortion utilizing a method designed to reach as broad a public audience as possible.'").

³⁷ See *Schwapp v. Avon*, 118 F.3d 106 (2d Cir.1997); see also Conn. 679, 699, 41 A.3d 1013 (2012); *Feliciano v. AutoZone, Inc.*, 316 Conn. 65, 85, 111 A.3d 453 (2015).

which has been recognized by our law. Violation of one's right to enjoy their good reputation is known as defamation.³⁸

At common law, actionable defamation requires that the complainant must demonstrate that the defendant made a defamatory statement, identifying the complainant, to a third party which caused injury to the complainant's reputation. A defamatory statement is defined as "a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associated or dealing with him. . . ."³⁹ However, the statement must be a factual statement, *i.e.* relating to an event or the state of affairs that existed in the past or present and is capable of being known, rather than an opinion. Whether a statement is defamatory is very much dependent upon the facts and circumstances at the time the statement is made. Importantly, a vital piece of the equation is whether an ordinary person listening to the statement is likely to understand that the statement is opinion or would reasonably believe that it was a statement of fact. Therefore, it is important to look at the context in which the potentially defamatory statement is made.⁴⁰

In the past, courts around the nation have looked to several factors when making such a determination. Recently, the Connecticut Supreme Court has summarized the analysis to involve the following three considerations: "(1) whether the circumstances in which the statement is made should cause the audience to expect an evaluative or objective meaning; (2) whether the nature and tenor of the actual language used by the declarant suggests a statement of evaluative opinion or objective fact; and (3) whether the statement is subject to objective verification."⁴¹

Where speech involves a public figure or official and involves matters of public concern, the complainant has to prove that the person making the statement acted with actual malice, such that the statements about the plaintiff were made with actual knowledge that they were false or with reckless disregard of whether they were false.⁴² A review of Connecticut cases indicates that Mr. Penn would likely be a "public official" or "public figure" for purposes of the First Amendment analysis.⁴³

³⁸ Wright, Fitzgerald & Ankerman, Connecticut Jury Instructions, § 461.

³⁹ See *Cweklinsky v. Mobil Chemical Co.*, 267 Conn. 210, 217, 837 A.2d 759 (2004).

⁴⁰ See *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, at 111-12.

⁴¹ *NetScout Sys., Inc. v. Gartner, Inc.*, 334 Conn. 396, 409-14, 223 A.3d 37, 47-50 (2020).

⁴² *Gleason v. Smolinski*, 319 Conn. 394, 431, 125 A.3d 920 (2015).

⁴³ See *Martin v. Griffin*, No. CV 990586133S, 2000 WL 872464, at *8 (Conn. Super. Ct. June 13, 2000), *citing* *Woodcock v. Journal Publishing Co.*, 230 Conn. 525 (1994), *cert. denied*, 513 U.S. 1149 (1995) (member of planning and zoning commission); *Kelley v. Bonney*, *supra*, 221 Conn. 549 (public school teacher); *Brown v. K.N.D. Corp.*, 205 Conn. 8 (1987) (assistant city manager); *Holbrook v. Casazza*, *supra*, 204 Conn. 336 (town tax assessor); *Strada v. Connecticut Newspapers Inc.*, 193 Conn. 313 (1984) (former state senator); *Dacey v. Connecticut Bar Assn.*, 170 Conn. 520 (1976) (author/lecturer/consultant); *Moriarty v. Lippe*, 162 Conn. 371 (1972) (police patrolman); *Abdelsayed v. Narumanchi*, 39 Conn.App. 778 (1995), *cert. denied*, 237 Conn. 915 (1996) (professor at state university); *Peters v. Carra*, 10 Conn. App. 410 (1987) (police officer); *Perruccio v. Arseneault*, 7 Conn.App. 389 (1986) (labor union president).

Applying the above analysis to the scenario at hand, it is clear that certain statements claimed to be facts were untrue and others were his opinions despite Mr. Goldson's repeated claims that he "stated facts." The statements were factual in nature in that they were statements concerning the plan to unencumber funds within the legal budget and the purported reasons those decisions were made. The nature and the tenor of the actual language used by the declarant suggests that there was money being "snatched" from or taken out of the pocket of the only black contractor. Further, when Mr. Goldson continues to discuss the way in which legal services contracts are awarded and adjusted by the City, he stated: "That's the nice way of putting it, we all know what the real deal is." Taken in context and together, Mr. Goldson's statements are reasonably interpreted as raising an unfair inference that Mr. Penn acted out of racial animus.

To understand fully the context of these statements, it is important to understand Mr. Goldson's background and experience on the BOE as of the date the statements were made on March 23, 2020. Mr. Goldson's statements were made with actual knowledge of the contracts, their terms and the budgetary process, as he was Board President and a signatory to the legal services contracts at issue. As of March 23, 2020, Mr. Goldson had also already served as Chair of F&O for the BOE. It is equally important to understand Mr. Penn's background with the BOE as of March 23, 2020. Mr. Penn began his tenure as CFO in late 2019, after the engagement of the subject legal services contractors. Mr. Penn had not met Attorney Philpot on any occasion thereafter and was not even aware of his race as of the time the budgetary decisions were being made. Further, there was no policy in effect on March 23, 2020 that would give preference to a minority or city-based contractor for legal services. The Procurement Policy referenced herein was only accepted and passed by the BOE on June 22, 2020. Therefore, when the budgetary decisions were made, the race of the legal contractor was of no import. At the time of Mr. Goldson's statements, the race of the legal contractor should have been of no import, as it was immaterial to the budgetary decisions made, but it remained the primary focus of Mr. Goldson's comments.

This context supports the conclusion that a reasonable listener would interpret the statements as asserting that the budgetary decisions were made based upon the race of the contractor, especially when preceded by statements suggesting the COO, Attorney Pinto, and CFO, Mr. Penn, are taking money by "snatching it out of a contract with a local, African American firm" and giving it to a non-minority firm, and followed by statements including, "[y]'all can make whatever excuses you want to make but you're taking money from a black firm's pocket." Further, this interpretation is evidenced by the press conference and protest that was staged on October 7, 2020, outside of the office building where Mr. Penn works. It was reported that one of the protesters stated that Mr. Penn had "no sympathy or respect for black people."⁴⁴ Since that time, Mr. Penn has continued to work from home and did not attend the October 13, 2020 BOE meeting.

It must also be noted that even critical speech is offered First Amendment protections. Courts have insinuated that individuals in public positions must have "tougher skin" than an ordinary

⁴⁴ The email from Brian Zahn to Phil Penn dated October 7, 2020 is attached hereto for reference as Exhibit I.

citizen given the likelihood that a public official or employee will be the target of critical speech.⁴⁵ However, knowingly false or misleading speech concerning the purported basis for budgetary decisions which wrongly impugns Mr. Penn's reputation is not protected speech.

3. Whether Mr. Goldson's Conduct Violated of Any Provision of the City Charter, Ordinances, Code of Ethics, or BOE's Bylaws

As previously noted, a clear distinction must be drawn between the standards which govern legal liability for conduct which is considered harassment and rights of public officials to speak freely and the standards of conduct and rules of decorum which an organization or a board may adopt to govern their proceedings. Whether on a larger, national scale, such as the U.S. Senate or the U.S. House of Representatives, or a local municipal Board of Education, such rules may be adopted to allow for an exchange of ideas and thoughts in an orderly and civil manner.

The New Haven BOE conducts its meetings pursuant to Robert's Rules of Order, Newly Revised.⁴⁶ According to Robert's Rules, "[t]he application of parliamentary law is the best method yet devised to enable assemblies of any size, with due regard for every member's opinion, to arrive at the general will on the maximum number of questions of varying complexity in a minimum amount of time and under all kinds of internal climate ranging from total harmony to hardened or impassioned division of opinion."⁴⁷ Thus, following these rules is important to preserve order, decorum and civility in public meetings, especially when dealing with contentious topics. Preservation of the same is important to address the topics of conversation in a timely, neutral and otherwise orderly fashion, despite any personal differences.

In addition to being self-governed by Robert's Rules of Order, Newly Revised, the New Haven Board of Education is governed by the standards of conduct set forth in the City Charter, which have been adopted and codified in its own Bylaws.⁴⁸ Said Bylaws were, in fact, adopted by the BOE on May 29, 2018, during the former tenure of Mr. Goldson as BOE President. The Bylaws are the set of policies and procedures that govern the Board of Education—beginning with its powers, purposes and duties. The Bylaws set forth the organizational structure of the Board, the expectations and requirements of its members, and the methods of operation. The Bylaws, therefore, govern the conduct of the BOE members at meetings, through the various policies and procedures set forth therein. The Bylaws set forth principles of conduct that, when taken with Robert's Rules, promulgate orderly discussion and consideration of all viewpoints pertinent to the

⁴⁵ See *Mattox v. City of Forest Park*, 183 F.3d 515, 522 (6th Cir.1999); see also *Dillaplain v. Xenia Cmty. Schs. Bd. of Educ.*, 2013 WL 5724512 (S.D. Ohio Oct. 21, 2013), *appeal dismissed* (Mar. 20, 2014).

⁴⁶ See Section 9325.1 of the New Haven Board of Education Bylaws. Section 9325.1 is entitled "Quorum/Rules of Order." The section discusses that the "[r]ules contained in Robert's Rules of Order, Newly Revised shall govern the proceedings of the Board of Education in all instances in which they are consistent with the bylaws of the Board, state and local law." It further states that "[t]he President shall preserve order and decorum. . ."

⁴⁷ Robert's Rules of Order Newly Revised [RONR] (11th ed.), Introduction, p. liii.

⁴⁸ See New Haven Board of Education Bylaws, Series 9000, adopted May 29, 2018.

decisions before the Board. Adherence to these rules protects the integrity of the process and promotes public confidence in the integrity of the result.

Mr. Goldson's conduct violated the provisions of Bylaws set forth above. As is evident by the record contained herein but more readily apparent when viewed through the online meeting access link, there are several instances in which Mr. Goldson's tone, demeanor and substantive comments contravene the above Bylaws. The following is a brief summary of the same:

1. Mr. Goldson's conduct violated Section 9020 of the Bylaws regarding Public Statements when he continued to rehash the budgetary decisions after those decisions had already been approved by both F&O and the BOE vote. He disagreed with the decisions at the BOE meeting on April 13, 2020 and again raised the issue at the BOE meeting on September 28, 2020.
2. Mr. Goldson's conduct violated subsections (c), (h) and (i) of Section 9271(k) of the Bylaws regarding Standards of Conduct. With respect to subsection (c), Mr. Goldson's comments concerning the reasons behind the budgetary decisions regarding legal services and the snow plow contractor, making "excuses" for why it was done and "snatching" funds from a contractor's "pocket" were all stated in a manner which constituted an affront upon the character, motives and intents of Mr. Penn. Further, with respect to subsection (h) Mr. Goldson sends emails directly to Mr. Penn concerning his individual questions, rather than asking questions that are questions of the BOE as a whole, through either the Superintendent or President. He demands answers to those questions within a certain time, thereby imposing additional duties upon Mr. Penn. Of note, in particular, are the emails of June 6, 2020 and June 8, 2020 that Mr. Goldson sent to Mr. Penn. Mr. Goldson sent an email at 11:22AM on June 6, 2020, a Saturday, morning requesting clarification of specific materials in the financial materials sent. Mr. Goldson sends another email at 12:43PM. Not having received a response, he sends an email concerning those same questions on Sunday evening at 11:21PM. Mr. Goldson sent a fourth email on Monday, June 8, 2020 at 1:07AM, prior to Mr. Penn returning to the office for his scheduled work day. Despite there being no consensus that the questions submitted were questions of the Board itself and no direct supervisory relationship between the two, Mr. Goldson seemed to demand a response to his personal questions from Mr. Penn during non-business hours. With respect to subsection (i), Mr. Goldson's demeanor and substantive comments as specified herein do not create a positive work environment. While Mr. Goldson, as an elected member of the BOE, is required to scrutinize the financial decisions made by NHPS on behalf of the students, those duties and responsibilities can properly be performed in a fair and neutral manner. Further, the code of ethics for both the BOE and for New Haven elected officials more generally and Robert's Rules call for impersonal presentation of viewpoints. Mr. Goldson has a duty to refrain from inappropriate insinuations concerning NHPS staff while fulfilling his obligations as an elected official.

3. Pursuant to Section 9325(a) regarding Meeting Conduct/Public Participation, every effort should be made to resolve such instances of alleged disorderly behavior by a BOE member or a member of the public through quiet and informal means. Therefore, to the extent that Mr. Goldson has an issue, it should be resolved through quiet and informal means, rather than at a public meeting. The function of the BOE, especially through their public meetings, is to address the concerns and needs of the students of NHPS. The comments at issue as identified herein violate each subsection (A) through (I) of Section 9325(a).
4. Finally, any action taken with regard to Mr. Goldson's comments that "whoever made the complaint will pay the price" will violate Section 9271(f) regarding Prohibited Practices. Mr. Penn, as an employee of NHPS has a right to put his employer on notice of any issues with regard to his work environment without fear of retaliation.

4. Whether the Conduct Constituted "Harassment"

The term "harassment" is defined several ways, both in legal and non-legal contexts. In common parlance, it is a term that has a somewhat subjective meaning. Harassment has been defined as "the act of annoying or worrying somebody by putting pressure on them or saying or doing unpleasant things to them."⁴⁹ As a verb, to "harass" someone is to create an unpleasant or hostile situation for especially by uninvited and unwelcome verbal or physical conduct.⁵⁰

The term "harassment" has not been defined in statutes or case law outside of the context of either criminal law or employment law; nor is it recognized as a cause of action outside of the scope of those two areas. In the State of Connecticut, employers have a duty to provide their employees a reasonably safe workplace environment.⁵¹ Connecticut law states that our anti-discrimination laws, which encompass the definition of harassment, should be interpreted in accordance with federal anti-discrimination laws.⁵² Therefore, "harassment" as defined in the employment context by the United States Equal Employment Opportunity Commission (EEOC) is instructive for purposes of Connecticut law. The EEOC defines "harassment" as "unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older),

⁴⁹ *Harassment*, Oxford English Dictionary Online, <https://www.oxfordlearnersdictionaries.com/us/definition/english/harassment>.

⁵⁰ *Harass*, Merriam-Webster Dictionary Online, <https://www.merriam-webster.com/dictionary/harassment>.

⁵¹ See Conn. Gen. Stat. Sec. 31-49. See also *Gonzalez v. Lecoq Cuisine Corp.*, Judicial District of Fairfield at Bridgeport, Docket No. CV136037490S (May 16, 2014, Sommer, J.) (finding that the defendant had "a duty of care to ensure its employees a reasonably safe workplace environment free from the type of harassment alleged by the plaintiff.").

⁵² *Payne v. Golub Corp.*, No. HHDCV1660646053S, 2017 WL 951179, at *3 (Conn. Super. Ct. Feb. 6, 2017). See, e.g., *Brittell v. Dept. of Correction*, 247 Conn. 148, 164, 717 A.2d 1254 (1998) (concluding legislature intended to make General Statutes § 46a-60[a][1], which prohibits discrimination on basis of 'race, color, religious creed, age, sex, marital status, national origin, ancestry ... [and] disability,' coextensive with Title VII of the Civil Rights Act of 1964.) (Citations omitted; internal quotation marks omitted.) *Patino v. Birken Mfg. Co.*, 304 Conn. 679, 689-90, 41 A.3d 1013 (2012).

disability or genetic information.”⁵³ Pursuant to the EEOC guidance, “harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. . . . Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.”⁵⁴

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA). Both state and federal anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.⁵⁵

Therefore, even pursuant to federal law, harassment has not been defined in a civil context outside of the context of conduct by and/or otherwise attributable to an employer. Given that we find the conduct at issue is conduct of a single member, *i.e.* not properly attributable to the employer, it would be inappropriate to opine whether the conduct constitutes “harassment” as defined in the employment law context.

The term “harassment” is not defined in the BOE Bylaws. However, it is clear that at a minimum the Bylaws prohibit harassment⁵⁶ as defined under state and federal law. The BOE’s adoption of Bylaws requiring civility and the observation of standards of decorum at its meetings, as well as the BOE’s adoption of Robert’s Rules to govern the conduct of its meetings, clearly creates a higher standard and prohibits a broader range of conduct than the definition of unlawful harassment applied by the courts and the EEOC in the employment context.

Given that the term “harassment” is not defined in the BOE’s Bylaws, in our view it would be appropriate to leave the question whether the conduct at issue, in addition to violating the specific provisions of the Bylaws discussed above, violated the Bylaws’ prohibition of conduct constituting harassment. We would suggest that, in determining whether conduct constitutes “harassment” as the term is used in the BOE’s Bylaws, it would be appropriate to consider all facts and circumstances presented, including the fact that the complainant interpreted the conduct as harassment and the fact that other BOE members considered the conduct to be in violation of the

⁵³ *Harassment*, EEOC, <https://eoc.gov/harassment>.

⁵⁴ *Harassment*, EEOC, <https://eoc.gov/harassment>.

⁵⁵ *Harassment*, EEOC, <https://eoc.gov/harassment>.

⁵⁶ See BOE Bylaws, Sect. 9325(a)(J) which requires that members “not make unreasonable noise or by intention distract or harass another.”

Bylaws and the fact that Mr. Goldson denied that he “maligned anybody” or “impugned character” and stated that he “didn’t cast aspersions on any staff member.”

5. Whether the City has an Obligation to Protect its Employee from the Conduct and if the City is So Obligated, What Steps the City Should Take to Fulfill its Obligation.

The City has an obligation to its employees, including Mr. Penn, to provide a reasonably safe work environment. It is not only sound employment practice but also legally required to investigate a harassment complaint received by an employee in order to minimize or otherwise avoid liability. If an employer fails to investigate such a complaint, it may be found to have endorsed the conduct.⁵⁷ Conducting an investigation, as was done under these circumstances, is the appropriate initial step when receiving these complaints.

Based upon our investigation Mr. Goldson’s conduct breached the BOE’s Bylaws. We recommend that the BOE take appropriate action to address the violations.

VI. Recommendations

In conclusion, we recommend the following:

1. Preserve Order and Decorum in Future Meetings

The BOE chose to set its own rules, *i.e.* its Bylaws, which it then modified and adopted on May 29, 2018. To the extent that the BOE found it appropriate to adopt that set of rules, it should abide by and seek to enforce them. While it is clear that each BOE member has the right to express their opinions and viewpoints, it is equally clear that they must do so while conforming to the rules by which they have elected to be governed. The Bylaws allocate to the Board President the authority and duty to preserve order and decorum. Pursuant to Robert’s Rules, all other BOE members also have a right to raise a “point of order” to address instances when the rules are not being followed. We recommend that all BOE members follow these rules to maintain order, fairness and decorum and facilitate the transaction of business and expedite meetings.

⁵⁷ See *Bolick v. Alea Grp. Holdings Ltd.*, No. 3:03CV165 (PCD), 2005 WL 8166988, at *8 (D. Conn. Mar. 30, 2005) citing *Malik v. Carrier Corp.*, 202 F.3d 97, 105 (2d Cir. 2000) for the proposition that “[a]n employer’s investigation of a harassment complaint is not a gratuitous or optional undertaking....” See also *Flanagan v. Ashcroft*, 316 F.3d 728,730 (7th Cir.)(2003) (affirming dismissal of a discrimination claim arising from the employer’s decision to investigate employee for harassment because employer was obligated to do so); *Lipscomb v. Winter*, 577 F. Supp. 2d 258, 277 (D.D.C. 2008), *aff’d in part, remanded in part*, No. 08-5452, 2009 WL 1153442 (D.C. Cir. Apr. 3, 2009).

2. Recommendations Regarding Past Conduct

The BOE has an obligation to correct the record with respect to the factual misstatements and comments concerning Mr. Penn as CFO. The BOE may do this in one or more of the following ways:

- a. Disassociate/Disavow: The BOE may make clear that the comments and/or statements by Mr. Goldson were not statements of the BOE as a whole.
- b. Deplore/Denounce: The BOE may deplore the statements and clarify the record with regard to the offensive statements.
- c. Resolution: The BOE may adopt a Resolution that specifies that the statements of any member of the BOE and/or staff of NHPS are not statements of the BOE or NHPS unless specified as such, as suggested in Sect 9271(k)(f) of the Bylaws and Ethics in Local Government Ordinance, codified at Sec. 125/8-4(f). The Resolution could either make reference to all past statements, or alternatively, make specific reference to Mr. Goldson's statements concerning the motivations behind the CFO's budgetary decisions to date.
- d. Censure: The Board may by motion censure the individual member to address the comments made in violation of its Bylaws.

3. Recommendations Regarding Future Conduct

The BOE may also adopt a Resolution that specifies that the statements of any member of the BOE and/or staff of NHPS are not statements of the BOE or NHPS unless specified as such, as suggested in Sect 9271(k)(f) of the Bylaws and Ethics in Local Government Ordinance, codified at Sec. 125/8-4(f). The Resolution could make reference to any statements made from the date of the Resolution forward, thereby including all potentially offensive statements.

Often, conflicts such as these are not resolved fully through the legal process. Rather, non-legal solutions may be better suited to address these issues. Assuming that the BOE members are amenable, options such as training or education in a mediation and/or retreat setting may help to promote cooperation and understanding among the members and to focus on the tasks required to serve the students of NHPS.