

GOLDSON PRELIMINARY RESPONSE TO THE TINLEY REPORT

12/14/2020

Introduction

It was clear from the start that the purported “investigation” of Goldson’s conduct was not a legitimately board approved activity. Furthermore, after reviewing the Tinley report it became transparent that it is a seriously flawed attempt to undermine and silence Goldson’s passionate advocacy for parity in contracting, staff and student safety during a pandemic, fairness in hiring and fiscal discipline. The report author even went so far as to suggest that Goldson should not ask questions or make comments unless there was a consensus among the full board to those questions. Since this report was not sanctioned by the full board and is illegitimate, our general response is not to directly address every issue raised, since there will be a time and place to do so which is more appropriate. Instead, we will address the major issue of the claims of: 1) the harassment claim made by Mr. Phillip Penn, NHPS CFO; 2) the legitimacy of the conduct investigation; and 3) the conduct of Penn, board leadership abusing or misusing their power, and possible malfeasance by the attorney conducting the investigation.

This response addresses several issues:

1. **Investigation of harassment claims** – we agree that it is entirely appropriate to investigate any claims of harassment made by staff members, though this process was flawed by not informing the board and the accused of the complaint and the process to be used to investigate.
2. **Investigation of conduct/misconduct of a board member** – It was inappropriate and contrary to board policies for the superintendent to launch an investigation of a board member for accusations of misconduct at board meetings. Additionally, it is inappropriate and contrary to board policies for one or more board members to launch an investigation of a board member for accusations of misconduct at board meetings or against other board members without full board approval. Lastly, the accused member should be informed of the complaint, the complainant, and the right to a trial to defend themselves.
3. **Flaws with the report** - The report was seriously and fatally flawed because of numerous misrepresentations and omitted information by Tinley and/or Penn.
4. **Right to address issues of public concern** - This report concluded that Goldson, as an elected official, has the constitutional right and duty to address matters of public concern. These rights cannot be limited by the BOE, and is in fact supported by the bylaws. Additionally, contrary to the suggestion made by Tinley, Goldson does not require his questions or comments to be approved by “consensus” of a majority of board members.
5. **Selective Prosecution** - Goldson was selectively prosecuted for minor infractions that all board members at one time or another have made. In fact, Goldson did file a complaint of misconduct by several members of the board before this investigation was launched. We believe and evidence points to this investigation being launched:
 - a) as retaliation for a previous complaint of misconduct that Goldson filed against board leadership earlier this year, [Exhibit 1] and in which legal suggested be put on the agenda for discussion [Exhibit 2], but was never addressed, and;
 - b) to defame and silence his advocacy.

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Investigation - Penn Complaint of Harassment

In July 2020 the Superintendent of Schools, Dr. Iline Tracey, hired a law firm Tinley, Renehan & Dost, LLP (Tinley) from Waterbury CT, *to investigate a harassment complaint by Philip (sic) Penn, Chief Financial Officer (CFO) of NHPS concerning Darnell Goldson, an elected member of the NHPS Board of Education (BOE).*" [Report pg 1]. They added that Penn's complaint alleges that 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."*

We were originally confident that if the investigation focused on the original complaint against Goldson, that it would quickly become evident that there would be no evidence that Goldson accused anyone of making decisions based on race, including Penn. After five months and many hours of reviewing BOE meeting minutes and recordings as well as interviewing numerous people, they did not identify one quote of any accusation of race based accusations.

Instead, Tinley suggests that *"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."* [Report pg. 2]. That statement says it all. Translated, it says that if you stretched your imagination enough, it could be implied that a question raised could be considered racially accusatory. Tinley also claimed that *"based upon our investigation, we conclude that several statements made by Mr. Goldson concerning contracts for service provided by minority-owned businesses were false."* Yet again they did not cite one statement by Goldson as false.

In fact, buried deep in the report is an acknowledgement by Tinley that Goldson has a constitutional right and duty to question expenditures as well as other decisions to be made by the Board of Education. *"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', 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 the NHPS in general. Therefore, we assume, for purposes of this analysis, that his speech addresses matters of public concern."* [Report pg. 36]

But most importantly, in reference to the original complaint by Penn that he was harassed by Goldson, Tinley concluded that harassment DID NOT occur. *"(H)arassment' 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), disability or genetic information.' 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.'...Therefore, even pursuant to federal law, harassment has not been defined in a civil context outside of the context of the conduct by and/or otherwise attributable to an employer. Given that we find the conduct at issue is the conduct of a single member, i.e. not attributable to the employer, it would be inappropriate to opine whether the conduct constitutes 'harassment' as defined in employment law context."* [Report pgs. 41-42]

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The Tinley report concluded:

1. Goldson has the constitutional right and duty to question public expenditures and public policy, and
2. They could not opine from the evidence that harassment of Penn by Goldson occurred.

Investigation of Goldson's Conduct at Board Meetings

It was understandable that if the Superintendent received a valid complaint of harassment, it should be investigated. It was investigated and it was dismissed. That should have been the end. But it was not. Instead, Tinley went further to investigate whether Goldson's behavior at BOE meetings had violated local, state or federal laws, policies, and/or bylaws. Now this investigation became a witch hunt – the goal became to find something to hang around Goldson's neck.

It is well beyond the authority of Superintendent Tracey to launch an investigation of a board member's "behavior" or "conduct" at BOE meetings, especially a duly elected member, being that she does not have a supervisory role over Goldson or the BOE as a whole.

It is also beyond the authority of individual or group of board members (per bylaws and Robert's Rules of Order) to launch an investigation of a board member's conduct without full board approval. There would be violations of several board policies to do so without board approval. The record shows that the full board never voted on a resolution to investigate Goldson's conduct. In fact, the board president had at one time denied even having knowledge of the investigation, stating in emails and board meetings that she was not involved and stating in a text message, "*Darnell, why do you assume this is coming from me? Again, I have nothing to discuss. I have no information.*" She further stated that it is "*a personnel issue*" and staff "*don't need my permission!!*" to launch an investigation of a board member. [Exhibit 3]

When this investigation of Goldson's board conduct was launched without board approval, at least five BOE policies were violated:

1. ***9010 – Limits of Authority – The powers delegated to a Board of Education by the State are delegated to the Board as a body. No authority is granted board members as individuals.*** [BOE Bylaws]

There are two possibilities as to whom launched this investigation of Goldson's conduct. Either it was the Superintendent or it was one or more board members. Neither had the authority to do so. The board never held a vote as to investigate a board member. Whomever authorized this investigation did so outside of their authority.

2. ***9271(j)(f) Code of Ethics – The leadership of the Board of Education - the President, Vice President, and Secretary – shall determine and recommend to the Board of Education, the appropriate action concerning any member of the Board of Education, to be imposed consistent with these Bylaws, applicable federal and state laws, court decisions, policies, and the rules of the Board of Education.*** [BOE Bylaws]

Again, the Bylaws and Robert's Rules set out rules for taking any action against another board member. Those rules clearly state that the full board must participate in the decision. Furthermore the superintendent is not a member of the board and therefore does not have the authority to participate in board related actions against members.

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3. **9271(k)(h) – Code of Ethics – New Haven Board of Education members shall not 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.** [BOE Bylaws]

Individual board members do not have supervisory authority over other board members. Any individual or group of BOE members launching an unauthorized investigation of a member without full board approval interferes with the duties and responsibilities of the investigated member to carry out their duty and responsibility to scrutinize the way in which monies are spent on behalf of the voters who elect them and the NHPS in general.

4. **9271(k)(i) – Code of Ethics – New Haven Board of Education members shall support and contribute to the maintenance of a positive 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...** [BOE Bylaws]

It is an inappropriate action for one or more board members to launch a public investigation of a member without board approval, and works against contributing to a positive and constructive environment.

5. **9325.1 – Quorum/Rules of Order – The rules contained in Robert’s Rules of Order, Newly Revised, shall govern the proceeding of the Board of Education in all instances in which they are consistent with the bylaws of the Board, state and local law.** [BOE Bylaws]

Robert’s Rules of Order states that “several steps must happen before a trial can take place. The first step when members hear of misconduct by another member is to choose a committee to investigate the validity of the reports and to see if charges should be made. The members of this committee should be chosen for their integrity and good judgment. To establish such a committee requires that a resolution be made, seconded, discussed, and voted on. This resolution should avoid as much detail as possible to protect the parties, who may be innocent.” The BOE never adopted a resolution to investigate Goldson’s conduct at meetings, nor did it approve expenditures to a law firm for such an investigation.

Additional Issues to Address

Retaliation for previous complaint of misconduct filed by Goldson - Goldson filed his own misconduct complaint earlier this year against several members of the BOE, including President Yesenia Rivera, Vice President Matthew Wilcox, and Secretary Edward Joyner. [Exhibit 1]

Denial of 1st Amendment Rights - Goldson has publicly advocated for changes in board policy around contracting, employee pay, and decision making processes at board meetings, which has resulted in embarrassing newspaper articles and public comment against these members and Mayor Justin Elicker. We contend that this “investigation” was organized and designed as a calculated and pernicious conspiracy aimed at defaming Goldson and other board members

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who are currently in the minority on the BOE. We further contend that this investigation was meant as a message to other board members and staff that dissent was not acceptable, and for the opposition to be intimidated into silence.

Recommendations for Sanctions for Misconduct and Negligence against Tinley and/or Penn for deliberately omitting important and pertinent information

- A. Tinley, after studying the Board Bylaws, Robert's Rules of Order, and relevant local, state and federal laws should have known or been aware of the fact that the Superintendent did not have the authority to launch a misconduct investigation of a board member, nor did individual members have that authority without full board approval. Yet they provided a report which investigated that conduct, and made recommendations for sanctions against that board member. They did so after reviewing months of minutes and board videos. Those videos would have revealed that several board members were "guilty" of the misconduct charges made against Goldson, since he on the record complained about the misconduct and requested relief.
- B. There are several incomplete or inaccurate statements in the report provided by Tinley, actually too many to address in this preliminary response. But we will list some of the most egregious examples. Tinley did not include pertinent and important information.

Misquoting and/or omitting information

1. While claiming that Goldson violated a section 9020 regarding public statements "*when he continued to rehash the budgetary decisions after those decisions had already been approved by the F&O and the BOE vote.*" Tinley only partially quotes the section, leaving out a very relevant, perhaps the most relevant, statement of that section.

Tinley's citation - **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. [Report pg. 32]

Tinley did not quote the entire section, but chose to leave out a very important citation. Below is the section on its entirety (the underlined section was omitted).

The full citation - **Section 9020 Public Statements.**

Before voting on any issue, all Board members shall be encouraged to present whatever evidence they may feel important to the matter at hand. The Board shall fully consider the implications and relevancy of all information so presented. All opinions, reactions and positions shall be openly discussed, so that each member may understand all aspects of the issue before the Board makes its decision.

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.

Tinley attempts to address the issue of Goldson's advocacy and questions as a violation of the bylaws. No bylaw can take away the right to raise issues of concern, especially from an elected official, no matter how dated those concerns may be. Considering the fact that they omitted an important citation from that section, and earlier in the document supported Goldson's constitutional right and duty to speak on issues of public concern,

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we contend that this was deliberate attempt to muddy the waters and confuse the board members and the public.

2. When addressing the issue of harassment, Tinley raised an issue of contact outside work hours between Goldson and Penn. They stated that *“On Saturday, June 6, 2020 at 11:22 am, 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 12:43 pm with additional questions. On Sunday, June 7, 2020 at 11:21 pm, Mr. Goldson sent a third email to Mr. Penn regarding those same questions. At 1:07 am 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.”*

There are several concerns with this. First, they failed to indicate Goldson’s email was in response to an email Penn had sent to Goldson at 11:15 am, seven minutes earlier (see attachment). Second, the board had received the fiscal documentation from Tracey late the day before (Friday), and was being asked to approve the documents that Monday. Goldson initially responded to Tracey that Friday with copies to all the board members and upper management, and then received responses from Tracey, Penn and attorney Alexiades throughout the weekend. To suggest that Goldson was contacting Penn directly, rather than he responding to an email sent to Tracey, was categorically false.

Either Tinley deliberately omitted this information, or Penn did. One or both should be sanctioned for providing false information to this board.

3. Tinley cited an instance where *““Mr. Goldson sent an email to the Board dated May 16, 2020, 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, or even Clinton, such conduct would never had happened. Mr. Goldson’s email further stated that ‘white privilege has not 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.’”* [Exhibit 4]

Tinley failed to mention in the report that email was not sent to Penn or any other staff member, but was sent to fellow board members.

4. Again, to buttress the claim for harassment, Tinley stated that *“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”.*

Tinley omitted, or failed to mention that statement was in response to Penn interrupting him during a board meeting, which is a meeting of and debate between of board members, not staff. The transcript states [Report pgs 21-25]:

While Goldson was speaking, Penn with *“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.”*

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Dr. Iline Tracey – *“Who are you talking to?”*

Goldson – *“Whoever interrupted me. He knows who he is. I’m not going to mention his name, but you’re not going to interrupt me again.”*

Dr. Tracey – *“Yes, I’m saying 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.”*

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. 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 was not the first time it was done...”

Penn – *“Sure, so first Mr. Goldson, I apologize for interrupting you. That was inappropriate.”*

Goldson – *“Thank you.”*

These are four of many misrepresentations in this document, such as the suggestion by Tinley that Goldson violated bylaws by asking questions which did not reflect *“the consensus of the BOE”*, while in the same document acknowledging Goldson constitutional right to ask questions. These misrepresentations either occurred because Penn didn’t provide all the information, or Tinley deliberately omitted the information.

Conclusion

This investigation was improperly launched, violated several board policies, and as stated earlier we contend that it was organized and designed as a calculated and pernicious conspiracy aimed at defaming Goldson and other board members who are currently in the minority on the BOE. This is evidenced by the glaring omissions from the document supporting Goldson’s position.

The BOE leadership has failed to address issues of fairness and transparency, and has very publicly attempted and often successfully obstructed board members’ constitutional rights to address matters of public concern, in violation of the constitution and our bylaws.

Most board members have been guilty at one level or another of violating our policies, no others have been investigated. The BOE failed to review the motion of censure made in March by Goldson. It failed to review complaints by the public of board members use of building facilities for their businesses. It failed to review legitimate complaints made by the public of against NHPS staff members and contractors who are related to Board members. A board member wrote an email to all board members except Goldson, calling him *“a...”* and a *“punk”*, and stating that *“his own siblings dislike him.”* [Exhibit 5]. A board member in a meeting late last year attempted to block the hire of an African American staff person because the person didn’t speak Spanish, nor was Latino. [link -] Recently, the Superintendent sent an email to board members suggesting that a contractor had tried to bribe her to increase a contract. Goldson insisted that it be reported to the proper authorities. It has not been reported or investigated. None of these complaints have been made against Goldson, yet he is the one investigated for what Tinley says was speech which was *“less than refined social or political commentary.”*

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We respectfully request that this board sanction Tinley and/or Penn, and then discard in the trash where it belongs.

Timeline of Events

Though the complaint was allegedly made in March, Tinley was not retained and the investigation did not begin until July, five months later. This timeline is important, since Mr. Goldson after that meeting filed a motion to censure several board members for misconduct.

March 23, 2020 – Penn allegedly filed a complaint of harassment against Goldson. We question whether this is the correct date, since we have not seen the original complaint.

April 13, 2020 - Goldson actually complained of unfair accusations of racism at this meeting. *“Madam President, if he (Wilcox) suggested I impugned anybody’s character I want him to put that in writing, so that I can know exactly what he’s talking about, because I didn’t impugn anyone’s character. I asked a question about why we’re spending this money, this way...We don’t know how much they’ve spent so far...Yet we are making decisions to add more money to their budget budget...And we’re doing it year after year after year that I’ve been fighting year after year after year. It is shameful that a board member would get up and accuse me and accuse me of impugning someone’s character. So put it in writing, I’d like to see it before the next meeting. Because I would like to get an apology when you can’t prove that I did it. Thank you, Madam President.”*

Goldson then asked for a written apology for several meetings.

May 15, 2020 - When he didn’t receive an acknowledgment, Goldson filed a motion to censure Wilcox and Rivera on, and forwarded to the Governance Committee. Rivera requested a legal opinion from Shipman & Goodwin attorney Thomas Mooney, who on May 18 wrote *“Read as a whole, we interpret Bylaw 9131 to mean that the Governance Committee is responsible for discussing and adopting specific procedures for Board operation. By contrast, the Motion to Censure relates to facts concerning actions by a Board member, not procedures. Therefore, we conclude that consideration of this Motion to Censure is the responsibility of the Board as a whole, and the appropriate procedure will be to place this matter on the agenda for a Board of Education meeting.”*

Rivera never placed the item on the agenda, and two months later a similar investigation was launched against Goldson.

June 29, 2020 – Tinley was engaged by either Superintendent Tracey or one or more board members, we still have not received a confirmation as to whom engaged this firm.

July 30, 2020 – Tinley writes to Goldson informing him of the investigation.