

Indian River School District
v.
Dr. Bradley Layfield

DR. BRADLEY LAYFIELD'S CLOSING ARGUMENT

THE NEUBERGER FIRM, P.A.
THOMAS S. NEUBERGER, ESQ. (#243)
17 Harlech Drive, P.O. Box 4481
Wilmington, Delaware 19807
(302) 655-0582
TSN@NeubergerLaw.com

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Attorney for Dr. Bradley Layfield

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I. Introduction - the Factual Record.

Preliminarily, there was confusion expressed at the February 15, 2024 termination hearing on just what constituted the factual record for this matter.

A. The Parties' Agreement.

To remind, clarify and remove any potential for confusion moving forward, it was agreed during the parties' Monday, January 29, 2024 Zoom conference with your Honor that testimonial evidence for the hearing would be admissible in the form of affidavits and/or prior speaking to the Board by witnesses during its earlier meetings. At the termination hearing, the District's counsel reaffirmed on the record that this was the agreement. (2/15/24 Tr. at 280, 283, 285, 289, 4-6).

B. Dr. Layfield's 13 Witnesses.

Based upon that agreement, Dr. Layfield introduced the written testimony of the following 13 witnesses at the hearing:

- Adrienne M. Donaway. Current Sussex Central special education teacher, teacher there for at least 6 years, has worked extensively with Dr. Layfield in Individual Education Plan (IEP) meetings and other student contexts at Sussex Central. 15 years teaching in the District total. By affidavit (Layfield Ex. 3), and by prior testimony. (Layfield Ex. 1 at 4-5).
- Brice K. Reed. Former teacher and Assistant Principal with Dr. Layfield at Sussex Central for eight years, retiring in 2020. Worked as Assistant Principal under Dr. Jay Owens for several years and as Assistant Principal under Dr. Layfield for 6 more years. Former principal of Georgetown Elementary (which is conjoined to and shares buildings/facilities with Sussex Central). By affidavit. (Layfield Ex. 4).
- Robert W. Long. Longtime Sussex Central teacher and Assistant Principal for 9-10 years. Involved with the District for 40 years. Dr. Layfield worked both under him and over him in chains of command during various postings, including at Sussex Central High (and also Middle) Schools. By affidavit. (Layfield Ex. 5).
- David Marvel. Current coach, longtime Sussex Central teacher and Assistant Principal. Continues and currently serves as Defensive Coordinator of the football team but is retired from teaching. By prior testimony. (Layfield Ex. 1 at 6-10 and Layfield Ex. 2 at 9-12).
- Lisa Lasher. Parent of recent graduate of Sussex Central. Local business person. By prior testimony. (Layfield Ex. 1 at 16-17).

- Gloria Steele. Current Sussex Central paraprofessional. Has worked there for at least 4 years, in the District for 10+ years and other districts for 15+ years. By prior testimony. (Layfield Ex. 1 at 30-31).
- John Wells. Current and longtime Sussex Central teacher and 200+ win head coach of football team. Has taught there for at least 29 years. By prior testimony. (Layfield Ex. 1 at 87-88 and Layfield Ex. 2 at 7-9).
- Judith Loeber. Longtime Sussex Central art teacher for at least 21 years. Presently retired. By prior testimony. (Layfield Ex. 2 at 3-5).
- Robert Weber. Current Sussex Central teacher for 9 years. Sussex Central teacher of the year in 2020. By prior testimony. (Layfield Ex. 2 at 5-7).
- Jeff Burton. Parent of recent graduate of Sussex Central. Local business person. By prior testimony. (Layfield Ex. 2 at 19-20).
- Mike Adams. Current Sussex Central teacher who has worked in the District for 20 years, and for 30 years total in education. By prior testimony. (Layfield Ex. 2 at 20-24).
- Amanda Steen. Sussex Central cafeteria worker. Worked there for 5 years. By prior testimony. (Layfield Ex. 2 at 24-25).
- Dr. Bradley Layfield. By affidavit. (Layfield Ex. 6).

C. The District’s 11 Live Witnesses, Signed and Summarized Statements of 20 Witnesses and Other Documents.

The District presented the live testimony of 11 witnesses.

The written, summarized, corrected and signed statements of 20 teachers and administrators, after two separate interviews by experienced District Investigators (both retired Delaware State Troopers with 30+ years of investigative experience) are contained in a formal Report found at District Exhibit 2. Review of each interview reveals the witnesses’ own handwritten notations and corrections of any inaccuracies or misstatements in earlier drafts. The retired Trooper investigators also had the witnesses sign their interview statements as well, attesting to their accuracy.

D. The Only Area of Dispute.

Only one unexpected area of dispute arose at the termination hearing. Despite having previously agreed to the admission of affidavits in lieu of live witness testimony, the District belatedly claimed prejudice at the admission of Dr. Layfield’s testimony. (2/15/24 Tr. at 285, 288-90). But as briefly noted at the hearing, such a claim of prejudice does not withstand factual

or legal scrutiny.

The District's investigators previously took Dr. Layfield's testimony on May 18, 2023. Then, after the District's referral of the matter to the Delaware Department of Justice for prosecution, counsel for the District subsequently sought to have their investigators interrogate and interview Dr. Layfield and again take his testimony.¹ Counsel for Dr. Layfield invoked Dr. Layfield's right against self-incrimination under the Fifth Amendment given the pending criminal charges.² Counsel for the District invoked Garrity v. New Jersey, 385 U.S. 493 (1967), and its Delaware Superior Court progeny, forcing such an interview at risk of "employment consequences," including termination.³ That Garrity interview then took place on November 7, 2023. Combined, both interviews totaled 72 pages of interrogation and are in the record. (District Ex. 8-9, 11 - the transcripts).

Both experienced retired DSP investigators then prepared a 33 page Report (District Ex. 2) which, in counsel for the District's words, "captures the interviews" and is "a summary of [their] findings."⁴ The District's careful investigators had the witnesses make handwritten corrections to their statements, sign and date them.

The District then entered that Report into evidence at the hearing. (District Ex. 2). It contains a four page summary of Dr. Layfield's testimony (id. at 5-8), that was argued from and discussed at the hearing. One of the retired DSP officers testified personally about his detailed interview of Dr. Layfield.

In light of these circumstances, it cannot be fairly said that the District was prejudiced in any way or did not have an opportunity for a full and fair examination. The District had two experienced investigators thoroughly interrogate Dr. Layfield on two occasions, on pain of termination. Those same investigators then summarized their findings into a Report containing the factual information thought most helpful to terminating Dr. Layfield from his employment, entered those findings into evidence at the termination hearing and one of the investigators testified about them as well. The District was not deprived of a full and fair opportunity to interrogate Dr. Layfield who had invoked his Fifth Amendment right not to testify which was only overcome upon the District's insistence and threat to fire him unless he testified to them. There is no prejudice to the District by the admission of Dr. Layfield's affidavit in these circumstances.

¹ (See J. McMackin e-mail to T. Neuberger dated Oct. 25, 2023).

² (See T. Neuberger e-mail to J. McMackin dated Oct. 25, 2023).

³ (See, e.g. J. McMackin e-mail to T. Neuberger dated Oct. 26, 2023).

⁴ (J. McMackin letter to Judge Carpenter dated January 24, 2024 at p. 5-6).

II. The Charges and Key Evidence Rebutting Them.

A. How the District Has Long Characterized This Case.

Dr. Layfield has had 10 generalized charges leveled against him. (See District Ex. 1 at 2-3). But, as the District has long explained in writing, they boil down to three specific core actions that are “very simple” to understand, all arising out of a security video of a crowded school hallway which “depicts a student attempting to flee the grasp of an administrator in order to confront an off-screen student. As she did so, her breast was exposed.”⁵ In the District’s words:

“[1.] Dr. Layfield displayed the video dozens of times on May 17 and May 18, 2023.

[2.] We allege he told people under his command to lie if asked if they had been shown the video.

[3.] One of Dr. Layfield’s assistant principals created a meme of a ‘still shot’ of the exposed student’s breast superimposed with the infamous ‘wardrobe malfunction’ at the Super Bowl involving Janet Jackson, and Dr. Layfield did nothing to stop the creation and viewing of the meme.

These are the bases for termination.”⁶

Out of an abundance of caution, the undersigned will address all 10 general charges as originally set forth in the termination letter (District Ex. 1), with the understanding there is significant overlap between them since all revolve around three actions long specified and delineated by the District above. No matter how they are categorized, the fair and unbiased reading of all the evidence results in the following failure of each charge and the District’s preferred punishment of termination.

⁵ (J. McMackin letter to Judge Carpenter dated Jan. 24, 2024 at p. 2).

⁶ (Id.) (enumeration added).

B. Charge #1 - the Phantom Meme Containing a “Still Shot” of “a Student’s Breast.”

As noted immediately above, Charge #1 always was focused on a meme containing “a ‘still shot’ of the exposed student’s breast”. (Id.). The text of the charge references “the still” and “a student’s breast.” That was always the undisputed understanding of both the District prosecuting the case, and Dr. Layfield defending it. In the District’s words, that was one of three “very simple,” easy to understand “bases for termination.” (Id.).

Of course, no proof of any such nudity ever was revealed after a 9 month investigation by both the District and the Department of Justice. The investigators’ long Report (District Ex. 2) demonstrated that the meme covered the face of the student and was blurred. (Id. at 9, 10 - testimony of Assistant Principal Jones). And, no nudity was shown either and it was not “degrading.” (Id. at 15 - testimony of Assistant Principal Oliphant). “It was not clear and she did not really see the exposure of the breast.” (Id. at 19 - testimony of Assistant Principal Donovan). I “didn’t remember seeing any nudity in the meme.” (Id. at 21 - testimony of Assistant Principal Fair). Speculative claims to the contrary in social media and similar public rumors were simply false.

1. But the District Changed the Factual Basis For the Prosecution The Night Before Hearing.

After 9 months of investigation, referrals by the District to state prosecutors for criminal charges, the administrative charges, and numerous written submissions and representations, on the evening of February 14, 2024, mere hours before the termination hearing, the District changed its whole theme of the case and factual basis of this specific charge, stating:

“Reference the notice of intent to terminate - To the extent any bases for termination were premised upon there being nudity in the meme, we do not contend that there was nudity in the meme.”⁷

As noted immediately above, the District has previously represented that nudity in the meme, specifically, “a ‘still shot’ of the exposed student’s breast,” was the “very simple” to understand, factual core of this charge.⁸

a. Such a Material Change Mere Hours Before the Hearing Violates Due Process.

But changing the previously conceded and admitted factual basis for the termination, after months of preparation to refute that factual basis, and mere hours before the termination hearing

⁷ (J. McMackin e-mail to T. Neuberger dated Feb. 14, 2024 at 7:38 p.m.).

⁸ (J. McMackin letter to Judge Carpenter dated Jan 24, 2024 at p. 2).

itself, deprived Dr. Layfield of a meaningful opportunity to defend himself from this new and revised charge and violates due process.⁹ Indeed, such a disorderly, last minute, fundamental change to the charges being defended against are the opposite of what due process requires.¹⁰ The fundamental fairness required by due process when a person's livelihood is on the line demands no less.

As the undersigned noted in his response e-mail a short time later, "thank you for agreeing you do not contend there was any nudity in the meme. I do believe this concession impacts reason 1 ... The nature of the meme has now been clarified greatly, it did not involve nudity."¹¹ Counsel continued in his opening the next morning, explaining -

[L]ast evening both sides agreed that with reference to the meme in dispute that there was no nudity displayed or shown in the meme. ... [that] takes the wind out of the sails of this entire attack on my client and his reputation because the problem the district was facing was driven by a narrative of a naked breast of a young black woman being leered at and mocked by white administrators in this meme. That's what lit the fire. ... Rumors began. Text messages were sent. Social media was out there. People were hearing it on their iphones that there was a narrative of a naked breast of a young black woman leered at and mocked by white administrators in a meme. ... we're here today because of these rumors that started and got out of hand.

(2/15/24 tr. at 23-25).

2. One Cannot Fairly Defend One's Self Against False Accusations About a Document Never Produced, the Description of Which Materially Changed At the Last Minute Which is Nonetheless Based Solely Upon Speculation and Conjecture.

The District's argument here entirely depends upon there being something improper or meriting a report to superiors on pain of discharge. But the District has failed to meet its factual

⁹ See, e.g. Schweizer v. Bd. of Adjustment of City of Newark, 980 A.2d 379, 385-86 (Del. 2009) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.").

¹⁰ See, e.g. Orville v. Div. of Fam. Servs., 759 A.2d 595, 598 (Del. 2000) (fundamental due process requires "providing the parties to the proceeding with the opportunity to be heard, by presenting testimony or otherwise, and the right of controverting, by proof, every material fact which bears on the question of right in the matter involved in an orderly proceeding appropriate to the nature of the hearing and adapted to meet its ends.")

¹¹ (T. Neuberger e-mail to J. McMackin of Feb. 14, 2024 at 8:09 p.m.).

burden and demonstrate a factual basis for any content contained within the meme being: (1) reportable; or (2) dischargeable.

There is a fundamental problem of trying to hit the District's moving target here. There is an inherent difficulty of constitutional proportions of trying to defend one's self from accusations based upon the content of a meme that one did not create, that has never in fact been produced by the District accuser, has never been seen by the District accuser, the description of which the District keeps changing. Indeed, as the District conceded, "the District does not have the meme at issue," nor was the Delaware "Department of Justice," to which the District referred Dr. Layfield for prosecution, ever able to find it, much less produce it.¹²

So from where does this charge originate? Clearly, only from speculation and conjecture, as repeated noted by Dr. Layfield's counsel.¹³ But such conjecture and "[s]peculation cannot supply the place of proof." Moore v. Chesapeake & O. Ry. Co., 340 U.S. 573, 578 (1951).¹⁴ Such proof is sorely lacking here and the District cannot meet its burden of consistently articulating the actual charge to be defended against, much less coming forth with evidence to satisfy it. The District "offers mere suspicion as its proof. [But] [i]t is well-settled that speculation and intuition may not be substituted for proof." Lasker v. McDonnell & Co., 1975 WL 1950, *16 (Del.Ch. July 9, 1975). This charge must fail.

3. What Remains, If Anything, Is Unproven.

To be clear, on the merits, this charge is DENIED.

What remains may be a claim that Dr. Layfield "did not take action"¹⁵ against Matt Jones who created the phantom meme. The District has alternatively summed this up as a claim that Dr. Layfield:

- "did nothing to stop the creation and viewing of the meme,"¹⁶ or that

¹² (J. McMackin letter to Judge Carpenter dated Jan. 24, 2024 at p. 4).

¹³ (See, e.g. T. Neuberger e-mail to J. McMackin dated Feb. 14, 2024 at 8:09 p.m.).

¹⁴ See also Noel v. United Aircraft Corp., 342 F.2d 232, 239 (3d Cir. 1964) ("It is well-settled that mere speculation cannot be substituted for proof."); Brzoska v. Olson, 668 A.2d 1355, 1364 (Del. 1995) ("Attenuated and speculative allegations ... do not give rise to a legally cognizable claim in Delaware"); Dia v. Ashcroft, 353 F.3d 228, 249 (3d Cir. 2003) (evidentiary "determinations [cannot be] based on speculation or conjecture, rather [they must be based] on evidence in the record.").

¹⁵ (District Ex. 1, at p. 2, #1).

¹⁶ (J. McMackin letter to Judge Carpenter dated Jan. 24, 2024 at 2).

- “knowing Matt Jones made a meme out of it, but doing nothing about it.”¹⁷

The problem for the District here is that the evidence, consisting of the District’s own witnesses and the District’s own termination Report, all is to the contrary.

a. Dr. Layfield Cannot be Faulted for “Creation” of a Meme He Did Not Create.

To begin, absent record evidence - of which there is none - that Assistant Principal Matt Jones told Dr. Layfield that Jones was going to create the meme, Dr. Layfield cannot be blamed for the “creation” of a meme which he did not ‘create.’ (See District Ex. 2 at 5 - testimony of Bradley Layfield explaining that Jones showed the meme to him after it had been created).

b. Dr. Layfield Was “Busy” at the Time He Saw the Meme.

In his interview with the District Trooper investigators, and as reflected in the District’s own Report, Jones explained -

Bradley was busy at the time he showed it to him, but looked at it and said ok and went back to what he was doing.

(District Ex. 2 at 10 - testimony of Matt Jones). This was explored more by the District’s investigators in interrogating Dr. Layfield and he testified that “he was getting ready for a construction meeting” at the time Jones showed the meme to him and “he really didn’t get it right away.” (District Ex. 2 at 5 - testimony of Bradley Layfield).

As Financial Secretary Sherrie Wright remembered and testified about her work in the administrative offices at the time, “the school was a busy place with a lot going on.” (District Ex. 2 at 20 - testimony of Sherrie Wright).

c. Dr. Layfield’s Reaction Was Reasonable As Demonstrated By the Identical Reactions of Several Additional Assistant Principals - Both Female and Male - Who Also Saw the Meme But Saw Nothing In It That Needed “Reporting”.

The reasonableness of Dr. Layfield’s reaction - as he is busy with his already busy day, is briefly shown a meme and then quickly moves on from it to deal with other pressing matters - was convincingly demonstrated in the District’s own Report by the District’s own two experienced investigators.

First, they interviewed Assistant Principal Nik Fair and memorialized in their Report that he testified that he also saw the meme but “he did not think much about it after he saw it”

¹⁷ (J. McMackin e-mail to T. Neuberger dated Feb. 5, 2024 at 1:13pm).

because “he was busy with other things” too that day, such that “he did not think about reporting it.” (District Ex. 2 at 21 - testimony of Nik Fair).

Second, Assistant Principal Aerin Donovan had a similar reaction. She testified that when Jones showed her the meme, she “chuckled when she saw it” but “did not think about reporting it” because “it was not clear,” you “did not really see the exposure of the breast” and “it seemed to focus on the faces of the people seeing it.” (District Ex. 2 at 19 - testimony of Aerin Donovan).

Assistant Principal Nik Fair’s identical reaction to the same circumstances of being quickly shown a meme, while busy with something else, and seeing nothing that needed “reporting” demonstrates that Dr. Layfield’s same immediate reaction was reasonable. Additionally, Assistant Principal Donovan’s similar reaction of finding nothing needing “reporting” also confirms this and further demonstrates that there was nothing wrong with Dr. Layfield’s reaction. The testimony of both of these Assistant Principals - male and female - are heavy weights on the scale of what was a reasonable reaction to a quick viewing of the meme and corroborate Dr. Layfield’s testimony about the same. There is no evidence to the contrary.

d. Dr. Layfield Cannot Be Faulted for Not Stopping the “Viewing” of the Meme When He Did Not Know it Was Being Viewed by Others.

As noted, the District charges that Dr. Layfield “did nothing to stop the ... viewing of the meme.”¹⁸ But as Dr. Layfield testified under examination by the District’s multiple Trooper investigators, he “was unaware [Matt Jones] was showing other people.” (District Ex. 2 at 6). Accordingly, Dr. Layfield cannot be fairly blamed here either.

e. Dr. Layfield Cannot Be Charged With Taking No Action At All When He In Fact Took Action Later That Same Busy Day.

First, the District’s termination Report concludes that Dr. Layfield told Dr. Renee Jerns of the District Central Office that very day that Jones had created the meme. (District Ex. 2, at 11 - testimony of Dr. Jerns). It states: “Renee said ... Bradley said ‘Oh by the way, Matt made a meme about it.’” As a result of Dr. Layfield’s report to the District’s Central Office here, Jones was removed from the school by lunchtime the very next day.

Second, retired Trooper Investigator Brown concluded that this direct report to Dr. Jerns occurred three days earlier than when Dr. Layfield normally would have reached a conclusion to act upon this incident. (District Ex. 9, November 7, 2023 interview of Dr. Layfield, at 22, lines 5-11).

Third, Dr. Jerns confirmed in her testimony at the termination hearing that Dr. Layfield

¹⁸ (J. McMackin letter to Judge Carpenter dated Jan. 24, 2024 at 2).

told her that Jones had made a meme, stating. “Oh, by the way, Matt made a meme of it.” (2/15/24 tr. at 109 - Jerns testimony). Although she refused to call it a “report,” her testimony makes clear that the information was conveyed to her by Dr. Layfield.

Fourth, the District Superintendent Dr. Owens, the very person who signed the charging document against Dr. Layfield claiming he did not “take action,” admitted in his testimony at the hearing that Dr. Layfield did in fact take action. He testified that Dr. Layfield “shared” with Dr. Jerns that a meme was created. (2/15/24 tr. at 218-19 - Owens testimony).

Although Dr. Owens refused to call this conveying of factual information to Dr. Jerns a “report,” he repeatedly called it a “sharing.” (2/15/24 tr. at 218-19 - Owens testimony). But this is mere semantics and form over substance when the very charge is that Dr. Layfield took no action whatsoever, not criticizing the specific action he did in fact take. Again, the District’s charging words are that:

- “You did not take action;”¹⁹
- “did nothing;”²⁰ and
- was “doing nothing about it.”²¹

Merriam-Webster’s defines the transitive verb “share” as “to tell (thoughts, feelings, experiences, etc.) to others often used with *with*”.²² Dr. Layfield told Dr. Jerns that Jones had created a meme. He shared that fact that he had learned with her. By definition, he conveyed that information to the representative of the District Central Office. That is significantly and materially more than doing nothing. And, of course, the effectiveness of his transmission of this information to the District representative is demonstrated by the fact that Jones was removed from the school the very next morning.

Finally, whether it is called a sharing or a report, as noted above it led to the removal of Jones three days earlier than it otherwise would have under the normal procedural process. Again, this is much more than the ‘doing nothing’ Dr. Layfield is specifically charged with.

For these reasons, this first charge is UNPROVEN and fails.

¹⁹ (District Ex. 1, p. 2, #1).

²⁰ (J. McMackin letter to Judge Carpenter dated Jan. 24, 2024 at 2).

²¹ (J. McMackin e-mail to T. Neuberger dated Feb. 5, 2024 at 1:13pm).

²² “Share”, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/share>

C. Charge #2 - Viewing of the Video “Without Good Reason and Instead for Improper Purposes.”

“You viewed and/or permitted others to view the surveillance video at issue multiple times, without good reason and instead for improper purposes.” (District Ex. 1, at 2).

This charge is DENIED.

1. Context - the Occurrence of a “Fight” In a Crowded School Hallway.

Context matters. And the context of this case arose out of a “fight” - triggering “two radio calls for help” by school staff²³ - initiated by an African-American female student on a White female student which triggered normal school policies, customs and practices of review of all fights for reasons of safety and discipline.

Merriam-Webster’s defines the noun “fight” as, *inter alia*: “a hostile encounter,” “a verbal disagreement” and “a struggle for a goal or objective.”²⁴ Its synonyms include: “clash, conflict, fracas, scrap, hassle, scuffle, skirmish and tussle.” Review of about two minutes of the surveillance video (Layfield Ex. 8 - 2:00 to 3:45) plainly demonstrates the factual existence of such a “hostile encounter,” “verbal disagreement,” “fracas, scrap, scuffle, skirmish and tussle.” Thus, despite the District’s repeated claims to the contrary, a “fight” occurred.

Even in the District’s own written Report (District Ex. 2), numerous of the District witnesses themselves described the entire matter as a “fight.”²⁵ These witnesses include:

- Vice Principal Matt Jones, (District. Ex. 2 at 9);
- Dean of Discipline Clay Heald, (id. at 18);
- Science teacher Chris Revel, (id. at 24);
- Financial secretary Sherrie Wright, (id. at 29);
- Delaware State Police Trooper and Student Resource Officer Jermaine Cannon. (Id. at 32).

The District belatedly submitted a sham affidavit from Dean of Discipline Clay Heald claiming that no “fight” had occurred. (District Ex. 14). This was directly contrary to Heald’s description of the incident as a “fight” in his interview with Investigator Brown. (District Ex. 2, at p. 18). As Brown explained in his live witness testimony at the termination hearing, Heald’s after-the-fact sworn statement is different from what he said to Investigator Brown during his

²³ (District Ex. 10 at 4; Layfield Ex. 6 at ¶ 11).

²⁴ “Fight,” Merriam-Webster.com Dictionary, www.merriam-webster.com/dictionary/fight

²⁵ (Layfield Ex. 6 at ¶ 12).

investigation. (2/15/24 tr. at 57-58 - testimony of Curt Brown).

So, after meeting with the District's counsel, Heald changed his testimony to something materially different from what he told the District's own experienced police investigators. Stated another way, Heald flatly contradicted himself in his sworn statement found at District Exhibit 14 which the District asks your Honor to rely upon in order to incorrectly conclude there was no fight. But as the Third Circuit has long explained about what inference to draw from such a material change in testimony -

It has always been understood--the inference indeed is one of the simplest in human experience--that a party's falsehood or other fraud in the preparation and presentation of his cause ... is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit.

Sheridan v. E.I. DuPont de Nemours and Co., 100 F.3d 1061, 1069 (3d Cir. 1996) (en banc).

2. Context - the District's "Top Priority" is "the Safety of Students."

As already documented in prior submissions to your Honor, the threat of violence and actual violence in schools is a serious problem throughout the State of Delaware.²⁶ But specific to Sussex Central, the Indian River School District (under both Superintendent Owens and his predecessor Superintendent Mark Steele) has made clear for many years their zero tolerance policy for any risk to the physical safety of the students. For example:

- Oct. 2021: Even in an incident not involving a "weapon," stating "I commend the SRO and the staff members involved ... for having the safety of students as their top priority."²⁷ (Statement of Superintendent Steele).

²⁶ The January 4, 2024 Hearing Brief (District Ex. 10) filed in this matter noted: "So this was thought to be a serious fight, possibly with racial overtones, and school fights are a major unpublicized problem in this and other public school districts throughout the State of Delaware. They need to be controlled and prevented from escalating into serious injuries for any students." (Id. at 4).

"The District has sought to cover-up fights and violence and keep these facts from the general public. There are Violence in the Schools Reports from 2018 to the present that were in the custody of Layfield before he was ejected from his office and denied his records. Counsel has sought those records from the District for this hearing but to date these student discipline reports have been withheld." (Id. at 4-5).

²⁷ www.wboc.com/news/education/student-tased-at-sussex-central-high-school/article_f66b1504-7935-512e-a77b-cad20e509b40.html

- March 2023: “The safety of students and staff is our top priority”²⁸ and expressing “appreciati[on] [for] the swift action taken by school staff and safety personnel.”²⁹ (Statement of Indian River School District officials).
- Feb. 2024: “The safety of students ... is our top priority.”³⁰ (Statement of the District).

The constant theme in their oft repeated words is that student safety comes first. Staff are encouraged and commended for being proactive in this regard.

3. Context - there is No Formal Policy on Use of Surveillance Videos.

The District offered no evidence that it has any written policy on the use of surveillance videos which was violated by Dr. Layfield. Instead Dr. Layfield has testified that there is a custom and practice, passed on to him by Dr. Owens when he was the principal at Sussex Central. (Layfield Ex. 6 at ¶¶ 3-5). “There is no policy nor has there ever been any training or directives concerning the use of surveillance cameras footage with school staff...” (Id. at ¶ 8).

4. Context - the Longstanding Practice In the District of Widely Sharing Surveillance Videos of Student Incidents.

So it was viewed according to longstanding customs and practices in an area where the District has elected not to have issued written guidance. Dr. Layfield so testified. (Layfield Ex. 6 at ¶¶ 4-7).

a. Seven Corroborative Witnesses.

At least seven witnesses also testified to the District’s longstanding custom and practices here, from administrators to discipline deans, from teachers to other staff.

(1). Longtime Administrator Brice Reed.

The affidavit of longtime administrator Brice Reed - who served as an Assistant Principal during the Principalships of both current Superintendent Dr. Owen and also Dr. Layfield -

²⁸ www.capegazette.com/article/sussex-central-high-student-found-gun-school/255358

²⁹ www.wrde.com/news/sussex-central-student-arrested-for-having-gun-ammunition-on-campus/article_07d195f6-c41e-11ed-9f8d-efbe7e31dc59.html

³⁰ www.wboc.com/news/update-15-year-old-arrested-following-shooting-at-sussex-central-high-school-basketball-game/article_55f4559c-d63e-11ee-be90-bbd00d17021a.html and www.delawareonline.com/story/news/crime/2024/02/28/15-year-old-charged-shots-fired-sussex-central-high-school-georgetown-basketball-vs-cape-henlopen/72763642007/

explains that “video surveillance is replayed almost daily multiple times to determine who offenders are and what occurred. Additionally, it is sometimes used to develop time lines, name victims, and associated violations of conduct that also may have occurred. It does sometimes involve nudity of students and sexual acts.” (Layfield Ex. 4 at ¶ 10).

(2). Longtime Administrator Robert Long.

Administrator and Assistant Principal Robert Long’s affidavit explained, “Concerning the video in question, I am sure he did what I and every administrator would do. Show it to your assistants, discipline team, and other staff members so they can learn the best ways to de-escalate a major incident in the building.” (Layfield Ex. 5 at 2).

(3). Dean of Discipline Clay Heald.

Clay Heald, the Dean of Discipline, also made it clear he had to review the video “many times ... trying to identify students involved in the incident,” which he noted was a “fight,” and “he was involved in the investigation of the fight, he saw the video surveillance of the student.” (District Ex. 2, at 18).

(4). Art Teacher Judith Loeber.

Art teacher Judith Loeber testified that she would sometimes be “pulled into the office by Bradley” to identify one of her students from a surveillance video. (Layfield Ex. 2 at 4). But importantly, she also discussed how Dr. Layfield would ask her to -

from video give context to their situation or their student challenges. What is going on with them? Possible trauma or changes in home situations, or lack of them? And discuss what we need to do in the student[’]s best interest to get them to move forward, to be successful in school and in life.

(Id.).

(5). Secretary Sherrie Wright.

Sherrie Wright, secretarial staff and not an instructor, explained “it was not unusual for the Administration to show them a video of a fight.” (District Ex. 2, at 29). In her testimony at the hearing, she again confirmed that “it wasn’t unusual for the administration to show the videos of fights.” (2/15/24 tr. at 207). Your Honor posed a follow up inquiry to remove any possible ambiguity of her personal knowledge of the history at Sussex Central here and Ms. Wright specifically confirmed that “I have seen other videos” of fights or incidents. (Id. at 208-209).

(6). Teacher John Tietz.

Drivers Education teacher John Tietz was asked why they look at videos, and “he

explained many times administrators asked them to identify students” from video. (District Ex. 2, at 28).

(7). Interventionist Leslie Tenbush.

Interventionist Leslie Tenbush explained that the Administration has them “review surveillance videos for training and for identifying students.” (District Ex. 2, at 30).

b. The Admissions from the District’s Key Witnesses About What is Accepted Practice in the District.

On the issue of nudity and what should and should not be reviewed on surveillance video, the live testimony of two of the District’s own witnesses is key.

Dr. Layfield explained there were “several student sexual encounters” that were captured on “surveillance camera footage and shared with staff who were not administrators” during “my time as an assistant principal under Dr. Owens,” (Layfield Ex. 6 at ¶ 5), demonstrating the established past practice at Sussex Central. In response the District rushed to rebut this sworn factual evidence and, in order to try to do so, offered focused and detailed live testimony from two high ranking District fact witnesses about one of these “sexual encounter” incidents that occurred at Sussex Central during the 2013-2014 school year.

First, was Assistant Principal Karen Oliphant. She was serving as an Assistant Principal at the time under Owens, as was Dr. Layfield and several others.

Second, District Superintendent Jay Owens, who is currently the highest ranking officer in the District and signed the charging documents against Dr. Layfield. Owens was the Principal at Sussex Central at the time. Dr. Layfield served under him as Assistant Principal and learned the ropes of proper District practices from him. (See Layfield Ex. 6 at ¶¶ 3-8).

(1). Brief Summary.

At the termination hearing, Superintendent Owens characterized Dr. Layfield’s viewing of the surveillance video of the May 2023 fight, in the crowded public hallway at the center of this case when a student aggressor’s breast becomes exposed, as an “egregious act and embarrassment toward a student during a vulnerable state” deserving the employment death penalty of termination. (2/15/24 tr. at 242 - testimony of Dr. Owens).

So given that the specific 2013-2014 incident or incidents involves multiple students being caught having sexual relations in a secluded private stairwell, and surveillance footage was then watched by numerous school employees with Dr. Owens in his office and other places, it is a helpful comparator for demonstrating what is, and is not, an accepted practice at the school when it comes to surveillance videos. Indeed, it is difficult to imagine a more vulnerable state than a number of minors having sex in a secluded private stairwell, not knowing they were being recorded, and then later having that footage watched by, at minimum, 8 or 9 school employees,

only one of which was the assigned police officer and none of which were a parent or a prosecutor.

Accordingly, review of the combined testimony of the District's witnesses here strongly corroborates material parts of Dr. Layfield's own testimony about the past practices at Sussex Central.

(2). Assistant Principal Oliphant: 8-9 School Employees Being Shown the Video of 6-8 Minor Students Engaging in Assorted Sexual Acts.

Assistant Principal Oliphant testified that an incident occurred when a condom was found in a stairwell. The investigation led to a surveillance video of the same stairwell which showed a number of students actively engaged in sexual intercourse. (2/15/24 tr. at 125-130, 132-33 - testimony of Oliphant). Key details include:

- there were three or four couples, so either six or eight students, (id. at 127);
- all or most were minors, (id. at 129); and
- various types of "sexual acts" and "sexual encounters" were noted to have been captured on the video, including "sexual intercourse," "kids having sex" and oral sex. (Id. at 132-33, 126-27, 129).

In light of this content, review of the video clearly meets the "egregious act and embarrassment toward a student during a vulnerable state" standard articulated by Dr. Owens.

So the question becomes who viewed the video? Assistant Principal Oliphant initially identified a universe of three persons who immediately viewed the video to determine what it contained:

1. The hall monitor, Mr. Heald, who found the condom;
2. Herself, the Assistant Principal who was called by the hall monitor upon seeing the sensitive content; and
3. The Principal Dr. Owens, who she immediately called upon seeing the sensitive content of the video.

(Id. at 126-27). She explained that Dr. Owens stated "okay, stop right there. Don't look at any more video footage." (Id. at 127-28). However, she continued and identified an additional 5 or 6 persons who were then shown the video by the District as:

4. The School Resource Officer, named Harmon;

5-7. “Probably the other assistant principals[,] That’s what I recollect.”³¹

(Id. at 128). And these were just the people she was sure of. As to others, she explained:

8. Her testimony is unclear whether Mr. Stoeckl, a non-administrator “hall walker” looking for kids cutting classes, who she “relied on to do a lot of the leg work” for her investigation also was shown the video.
- 9+. “I don’t know” if other additional persons viewed it given the number of those who could simply access and view the videos.

(Id. at 128-129).³²

If anything should be treated with the utmost of sensitivity if not complete confidentiality, it is a video of eight minor students engaging in private sex acts in a secluded part of the school where they do not know they are being filmed. There can be no more “embarrass[ing]” and “vulnerable state”³³ for such young students. Nevertheless, Assistant Principal Oliphant’s testimony reveals that - under Superintendent Owens’ stewardship as Principal - at least 8 and likely more employees were shown the video, significantly more than the three who had any official ‘need to know’ once the content was determined and it was reported up the chain of command.

Accordingly, as one of the many other Assistant Principals at the time, Dr. Layfield here learned that even sexual acts can be circulated among hall monitors, staff, the SRO and administrators, if not others. That is the plain lesson from the testimony of Assistant Principal Oliphant, a witness whose demeanor demonstrated she was clearly not a witness friendly towards Dr. Layfield.³⁴ For that reason, the scope of her testimony here carries even more convincing weight and corroborates Dr. Layfield’s testimony about the past practice at Sussex Central.

³¹ Although there are 6 Assistant Principals at present, it is believed there were at least 4 at the time. We know from Dr. Layfield’s affidavit that he was one of the Assistant Principals it was shown to. (Layfield Ex. 6 at ¶¶ 4-5, 3).

³² We know from Dr. Layfield’s affidavit that it was shown to non-administrative staff. (Layfield Ex. 6 at ¶ 5). He remembers at least 12 persons in Dr. Owens’ office when it was shown on one of the several occasions, specifically the time the video was shown to someone from the District Office.

³³ (2/15/24 Tr. at 242 - testimony of Dr. Owens).

³⁴ This is because - as explained by Assistant Principal Donovan in her own testimony - Oliphant and Donovan both feel they are “outsiders” since most of the other administrators “are the same age and have been friends since high school.” (District Ex. 2 at 19 - testimony of Donovan).

(3). Superintendent Owens: Numerous Employees Watching 2 Minor Students Engaging in Assorted Sexual Acts.

In his testimony, Superintendent Owens contradicted some of the testimony of Assistant Principal Oliphant and claimed the video did not show as many students having sex and also identified additional specific persons the video was shown to while omitting others.

First, he said it was only a video of “two students” having sex (2/15/24 tr. at 272 - testimony of Superintendent Owens) that they watched, not the six or eight students being watched as Assistant Principal Oliphant testified to.³⁵

Second, he described the scope and number of viewers as: “admin discipline staff only,” “administrators and the discipline dean,” and an “administrator for pupil services from the district office.” (Id. at 226-28. This appears to be at least 7 persons:

1. He as Principal;
- 2-5. The Assistant Principals (assuming there were only four at the time and not more);
6. The Discipline Dean (not mentioned by Oliphant);
7. An Administrator from the District Office (also not mentioned by Oliphant).

Between the testimony of both Oliphant and Owens, 9 administrative and non-administrative employees appear to have been specifically identified as for sure viewing the student sex videos, while several additional non-administrative staff are not ruled out which is consistent with Dr. Layfield’s affidavit and memory of Owens allowing a wider circulation beyond just administrators.

(4). But There Can Be No Justification For the Scope of the Viewing Once the “Egregious” and “Embarrassing” Content is Determined.

To be clear, this is not a numbers game. Either way, Dr. Owens felt the need to show to a significant number of employees a private sex video of at least two but likely up to eight minor students who thought they were alone, but offered no justification other than that there was a

³⁵ An alternative reading is that they are both accurate but there were simply multiple incidents of students being caught on video having sex that multiple staff ended up watching. This of course would be consistent with the affidavits of both longtime administrator and Assistant Principal Reed and Dr. Layfield.

“business” reason to do so. (*Id.* at 228). But what business reason could there be once the content is determined and he can determine discipline on his own? Although he denied on cross examination ever hearing the crude viewer observation about bull riding (*id.* at 273) when the video was mass viewed in his office, even without commentary, there is no reason that any adults should be watching children having sex. **Once one administrator was aware of it, there should never be a need to show the video to anyone except a parent, police officer or prosecutor.** But that is not what Dr. Owens explained occurred. None of the multiple persons who he mentioned watched the video were a police officer, prosecutor or a parent. Again, respectfully, there was no ‘need’ for a room full of adults to watch two children, much less eight children, having sexual relations. Nevertheless, this was accepted practice.

(5). The Takeaway and Application to Dr. Layfield’s Case.

These administrators, all high ranking District witnesses whose detailed testimony was put into the record by the District itself, corroborate significant portions of Dr. Layfield’s testimony about what was permitted when he was training and learning as an Assistant Principal under Dr. Owens (Layfield Ex. 6 at ¶¶ 3-7), and the testimony of other witnesses such as Administrator Reed (“video surveillance ... does sometimes involve nudity of students and sexual acts.” - Layfield Ex. 4). Collectively, they demonstrate that sexual acts and nudity are:

- (1) sometimes found in surveillance videos; and
- (2) sometimes shown for reasons that can be uncomfortably difficult to later explain in the harsh glare of public spotlight, with the benefit of 20-20 hindsight.

Is watching a surveillance video containing nothing other than two minor students having sex in a secluded, private stairwell any less of an “embarrass[ing]” and “egregious act” towards “a student during a vulnerable state” (2/15/24 tr. at 242 - testimony of Dr. Owens), than watching a surveillance video of a fight in a crowded public hallway where one student belligerent seemingly comes out of her top? If anything, viewing of the latter is more understandable and blameless than the former since there are widespread and obvious safety implications of a fight in a hallway crowded with uninvolved students while there are no analogous safety implications for an isolated sexual act (or acts) between two (or up to eight) minor students. And is it made any less blameworthy when the purpose of the viewing was not to see whatever unviewable nudity could be seen but instead was:

- (1) to at best: (a) share widely with staff who the participants were in case another fight occurred in the future; (b) demonstrate the proper means of getting between fighting students in a difficult situation to prevent them from striking each other; and/or (c) obtain any feedback available from a wide-ranger of school employees about anything happening in the lives of these particular students which might explain their unacceptable behavior; or,

- (2) at worst: find some humor in the looks of surprise in the faces of the uninvolved students in the hallway during the stressful graduation season and busy end of the school year?

Either way, that is the factual record on past practice in the District as explained even under the most testimonially optimal conditions by the District's own Superintendent and a current Assistant Principal, even putting all inferences in the District's favor. But even this demonstrates there was nothing unprecedented in Dr. Layfield's use of the video in question and he should not be singled out for doing what other administrators have done and what the Superintendent trying to take his job away has done.

5. Dr. Layfield's Sworn Testimony.

Dr. Layfield's sworn testimony explaining why he viewed the video is in the record, and has been public, and consistent, since at least his August 21, 2023 press release. For clarity on location in the record, that testimony is found at Layfield Exhibit 6, Dr. Layfield's sworn affidavit, at paragraph 11, which specifically "affirm[ed] the truth of all facts stated in my January 4, 2024 hearing brief filed with Judge Carpenter in this matter." That testimony is:

- Dr. Layfield went to his office and pulled it to see what had happened, likely three times.
- then "five concerned teachers came to him and asked what was going on since two radio calls for help had gone out during the fight." He showed the footage "several times."
- When she arrived for second period, VP Oliphant was shown the "footage of the problem at the start of her work day."
- Trooper Hudson on site for a criminal investigation demanded to see it and Dr. Layfield complied.
- Later three other staffers including a classroom teacher near the fight and an interventionist asked and were allowed to view it.
- And then at the end of the day Dr. Jerns was shown it as fights are in her jurisdiction.

(District Ex. 10 at 5-6).

Finally, as to number of views, it is self evident from viewing the surveillance video (Layfield Ex. 8) that it has to be run three or more times to understand what is going on.

6. The Big Picture - the Use of “Humor” As a Coping Mechanism In One of the Most Stressful Professions.

Stepping back however, the District spent much time at the termination hearing trying to attack Dr. Layfield’s use of humor as a means of alleviating stress and raising the spirits of the fellow teachers and administrators at Sussex Central. But such an approach ignores the well-documented realities of the education profession.

a. The Baseline Stress of the Education Profession.

Education is “regarded as one of the most stressful professions worldwide,” a longstanding problem only exacerbated by the pandemic.³⁶ As Forbes magazine has explained -

Teachers and school leaders are more than twice as likely to be stressed as other working adults ... Educators were also more likely to suffer from burnout or depression than the general working population, and to admit that they are not coping well with job-related stress.³⁷

This problem has attracted much attention from the general media,³⁸ and public policy think tanks,³⁹ among others.

³⁶ Kenjiro Tsubono, Sachiko Mitoku, Public school teachers' occupational stress across different school types: a nationwide survey during the prolonged COVID-19 pandemic in Japan, Frontiers in Public Health, Sec. Occupational Health and Safety, Vol. 11 (Oct. 18, 2023), doi.org/10.3389/fpubh.2023.1287893, www.frontiersin.org/journals/public-health/articles/10.3389/fpubh.2023.1287893/full.

³⁷ Nick Morrison Teachers Twice As Likely To Be Stressed As Other Occupations Forbes (June 22, 2022) www.forbes.com/sites/nickmorrison/2022/06/22/teachers-twice-as-likely-to-be-stressed-as-other-occupations/?sh_1b593d5c3d20.

³⁸ See, e.g. Madeline Will Stress, Burnout, Depression: Teachers and Principals Are Not Doing Well, New Data Confirm Education Week (June 15, 2022), www.edweek.org/teaching-learning/stress-burnout-depression-teachers-and-principals-are-not-doing-well-new-data-confirm/2022/06.

³⁹ See, e.g. Elizabeth D. Steiner, et al., Restoring Teacher and Principal Well-Being Is an Essential Step for Rebuilding Schools: Findings from the State of the American Teacher and State of the American Principal Surveys. RAND Corporation (June 15, 2022), www.rand.org/content/dam/rand/pubs/research_reports/RRA1100/RRA1108-4/RAND_RRA1108-4.pdf ; Elizabeth D. Steiner, Ashley Woo, Job-Related Stress Threatens the Teacher Supply, RAND Corporation (June 15, 2021) https://www.rand.org/content/dam/rand/pubs/research_reports/RRA1100/RRA1108-1/RAND_RRA1108-1.pdf.

b. The Long Hours Above and Beyond that Baseline That Dr. Layfield Puts In.

The factual record in this matter reflects how far beyond that bare minimum baseline Dr. Layfield goes. For example, 29 year current and veteran Sussex Central teacher, and legendary head football coach, John Wells' testimony is part of the record. He explained that Sussex Central is a school that is "hard to run." Between "[t]he number of kids and the diversity" there, "[i]t takes a special person to run" Sussex Central. He has "been through quite a few principals at the high school" in his 29 years there and Dr. Layfield came in after "a string of administrators" who he politely described as "real rough." But through his hard work, Dr. Layfield "really put the foundation down and took us to new levels" and is a "great leader." (Layfield Ex. 1 at 87-88; Layfield Ex. 2 at 8).

Dr. Layfield did this through long hours and hard work. Numerous teachers, administrators, coaches, and parents testified to this. For example:

- Longtime Coach (and teacher) Wells - he "keep[s] us safe, being meticulous, being there all hours beyond what he should be....[e]very day, even on weekends, even on Sundays." (Layfield Ex. 2 at 8).
- Longtime administrator and Assistant Principal Robert Long - "[h]e would arrive everyday at 4:30 AM and would not leave until the last sporting event was over. When asked why he stated that he wanted to make sure that everything was totally ready when the students entered the building." (Layfield Ex. 5 at 2).
- Cafeteria worker Amanda Steen - "I'd go in at 6:00-6:15 [a.m.]...[and] Bradley was there walking around that whole building, checking things out. What a dedicated man. This is what he is to the school system and Sussex Central High School." (Layfield Ex. 2 at 25).
- Sussex Central Teacher of the Year Robert Weber - he "has epitomized the role of a leading individual within an educational setting ... He is often the first faculty member in the building...Putting in several hours of administrative work prior to the arrival of students" in order to allow him to "assist[] students" once they arrive and "offer[] words of encouragement to teachers" who so sorely need them. (Layfield Ex. 2 at 5-6).
- Experienced special education teacher Adrienne Donaway - "He's the first person to work in the morning, sometimes before 5:00AM, and he doesn't think we know it, but he's always the first person to step up when there is a student in need....I've never met anyone more dedicated." (Layfield Ex. 1 at 5).
- Longtime teacher and coach Dave Marvel - he's a "light" that "shine[s] for everybody." (Layfield Ex. 1 at 10).

- Paraprofessional Gloria Steele - “I have never worked for a principal that genuinely cared for all the students as well as all of the staff at any other school in the entire Indian River School District,” he’s “one [in] at least 1,000,000.” (Layfield Ex. 1 at 31).
- Parent Jeffrey Burton - he’s the “first person in the building and the last person to leave on most occasions on most days...it is rare and hard to find somebody that is so passionate about what they do.” (Layfield Ex. 2 at 20).

But such long hours takes a toll.

c. The Use of Humor to “Cope” with Stress.

Dr. Layfield explained to his interrogators that “I mean, you’ve got to be lighthearted I believe, in any organization in order to make it day by day.” (District Ex. 9, November 7, 2023 deposition, at 25, lines 20-22).

Several of the Assistant Principals testified in the District’s Report about the use of humor around Sussex Central.

In the words of one, it reflects the reality that “the job is hard” and “[o]ne of the ways [we] cope is to laugh about alleviating a stressful situation, not to cause harm.” (District Ex. 2 at 10 - Jones testimony).

In the words of another, “there is joking around” and “joking amongst the team but they are professional.” (District Ex. 2 at 21 - testimony of Nik Fair). Assistant Principal Fair also testified that there is one “particular person” on the administrative team who claims the joking is sometimes “inappropriate” but he denied this, explaining it was always “professional.” (District Ex. 2 at 21 - testimony of Nik Fair).

Assistant Principal Oliphant also talked about other employees trying to be humorous in the workplace, terming it “typical men and goofy things they do,” “sometime these guys will review cameras and see people falling or tripping and they think it’s funny.” (District Ex. 2 at 15 - testimony of Karen Oliphant).

Although not an administrator, Drivers Education Teacher Melissa Abbott aptly described the viewing of the expression on the bystander student at issue in this case as simply “just a HA HA moment.” (District Ex. 2 at 27 - testimony of Melissa Abbott).

The plethora of testimony in this regard is a recognition of one particularly well-known Proverb, that “a merry heart doeth good like a medicine, while a broken spirit dries the bones.”

7. Any Laughter or Joviality Was Directed at the Expressions on the Faces of Other Students in the Hallway, Not the Student Who Was Exposed.

At the termination hearing, the District implied, suggested and otherwise claimed that Dr. Layfield was laughing at the misfortune of the female student belligerent whose shirt was pulled down by Assistant Principal Donovan while fighting to rejoin her tag-team partner in the fight. The District's theory of its case has been Dr. Layfield got his jollies out of showing nudity of a Black female student.

But there is no factual basis whatsoever for such a false and slanderous claim. As explained below, at least ten (10) of the District's witnesses testified on at least fifteen (15) separate occasions that this is not what occurred.

a. Witness #1 - Teacher Chris Revel.

Teacher Chris Revel was questioned on three separate occasions over the course of nine months about what Dr. Layfield was showing persons in the video. In his first interview in May 2023, he explained that Dr. Layfield just "commented on the expressions of the students." (District Ex. 2 at 24). When questioned again in October 2023, he testified that "Bradley specifically told him to look at the expressions on the faces of the other students." (District Ex. 2 at 24). Consistent with his prior sworn testimony, at the termination hearing in February 2024 he also testified that Dr. Layfield was pointing out in the video the funny face being made by the bystander student. (2/15/24 tr. at 178 - Revel testimony).⁴⁰

b. Witness #2 - Secretary Sherrie Wright.

Financial Secretary Sherrie Wright also testified several times. She asked what had happened and Dr. Layfield showed her the video. She testified that "he wasn't laughing about her breast coming out, he was laughing about the expressions of the faces of the students seeing the incident." (District Ex. 2 at 29).⁴¹ She also explained that "it was not unusual for the Administration to show them a video of a fight." (District Ex. 2 at 29). In her testimony at the

⁴⁰ A. We watched the same segment three times....

Q. Was a student making a funny face involved each time?

A. Yes.

Q. Was that student pointed out to you?

A. Yes.

Q. How would you describe Dr. Layfield's demeanor...

A. We were laughing.

(Id.)

⁴¹ Dr. Layfield characterized her reaction at his deposition as similar to "the other students in the hallway." (District Ex. 9, November 7, 2023 deposition, at 32, lines 12-13).

termination hearing, she again explained that Dr. Layfield’s “jovial” demeanor was directed at the expression on the bystander student’s face. She explained that he was not laughing at the belligerent student who had part of her top pulled down. She explained this on direct examination by counsel for the District and confirmed it on cross by the undersigned. (2/15/24 tr. at 205- Wright testimony).⁴²

c. Witness #3 - Teacher Melissa Abbott.

In multiple interviews, Drivers Education teacher Melissa Abbott testified that “the discussion between [she, Jon Tietz] and Bradley [w]as about the expressions and reactions of the other students watching the incident.” She called it “just a HA HA moment.” (District Ex. 2 at 27).

d. Witness #4 - Teacher Shane Miller.

Physical Education teacher Shane Miller also testified that “he remembered Layfield ...saying look at the expression on this girl’s face.” He also recalled “speak[ing] with [Assistant Principal] Aerin Donovan and was joking with her about it.” (District Ex. 2 at 26 - testimony of Shane Miller).

e. Witness #5 - Teacher Jon Tietz.

Drivers Education teacher John Tietz also repeatedly testified, explaining that Dr. Layfield was “commenting about the look on the bystander student’s face.” The focus was “the expressions of the others students,” not the aggressor whose shirt was pulled down. (District Ex. 2 at 28).

f. Witness #6 - Interventionist Leslie Tenbrush.

Interventionist Leslie Tenbrush testified that “they were laughing about the expressions on the faces of the students watching the incident,” and “they weren’t focused on the breast exposure and the laughing was about the student’s expressions.” (District Ex. 2 at 30).

g. Witness #7 - Teacher Mike Adams.

⁴² Q. Was there any laughing at one of the students?

A. More the expression on the students’ faces.

Q. Was there any reference to the girl with the exposed breast?”

A. No. More the expression on the students’ faces.

(Id. at 205).

Q. ... you didn’t recall Dr. Layfield laughing at the student who had had the incident?

A. That’s correct. He was jovial about the students expressions on their faces.”

(Id. at 207).

Teacher Mike Adams testified that “there was a discussion about the expressions of the faces of students” and he “did not see the breast exposure,” in the video. (District Ex. 2 at 31). Dr. Layfield recounted Adams’ reaction was “same thing with him, looking at the laughter and the shocked looks on the kids faces.” (District Ex. 9, November 7, 2023 deposition, at 32, lines 21-23).

h. Witness #8 - Assistant Principal Karen Oliphant.

Assistant Principal Oliphant explained that “Bradley was focused on the reaction from the other students and their expressions of witnessing the incident.” (District Ex. 2 at 15).

i. Witness #9 - Dr. Renee Jerns

Dr. Jerns herself admitted Dr. Layfield “said ‘Do you want to see something funny?’” He then played the video and “keys in on [Assistant Principal] Aerin [Donovan] and a male Hispanic student who sees it happen and is laughing.” (District Ex. 2 at 11).

j. Witness #10 - Assistant Principal Aerin Donovan

Donovan corroborated Jerns recalling that Dr. Layfield changed the subject of their meeting to something humorous by asking - Do you “wanna see something funny?” (District Ex. 2 at 19). As noted above by teacher Miller, he and Assistant Principal Donovan were joking about it together separately. (District Ex. 2 at 26 - testimony of Shane Miller).

k. Dr. Bradley Layfield.

These ten (10) District witnesses, testifying on at least fifteen (15) separate occasions corroborate Dr. Layfield’s testimony that he was focused on finding some humor in the expression on the bystander student’s face, not leering at the aggressor student. On interrogation Dr. Layfield explained the “pretty big alarm from some of the students trying to make their way in.... One particular student that had turned around with her eyes wide open and her mouth wide open, her jaw dropped.” (District Ex. 8, May 18, 2023 deposition, at 4, lines 12-14; *id.* at 5, lines 15-19). “Looking at the reaction of several of them shocked and laughing and everything else.” (District Ex. 9, November 7, 2023 deposition, at 14, lines 7-9).

In his statement to the District’s investigators it is memorialized “Bradley stated they commented not on the wardrobe malfunction but on the reactions of the students in the hallway.” (District Ex. 2 at 6 - Layfield).

8. Numerous Other Administrators and Teachers Were Independently Observed to be “Laughing Hysterically” at the Look on the Faces of the Surprised Bystanders.

Again, the District’s own Report compiled by its experienced police investigators documented that numerous administrators and staff, both male and female, found the look on the

face of the surprised bystander to be very humorous in this stressful educational environment.

For example, Assistant Principal Nik Fair testified that Assistant Principal Aerin Donovan - who inadvertently pulled down the aggressor student's shirt while struggling to stop her from returning to the fight - "was talking about the meme [and] laughing about the way it happened" so much that it got to the point that "he was tired of hearing about it." (District Ex. 2 at 21 - testimony of Nik Fair).

Assistant Principal Donovan also admitted that she "chuckled when she saw" the meme because it "seemed to focus on the faces of the people seeing it." (District Ex. 2 at 19 - testimony of Aerin Donovan).

Teacher Miller, who never saw the meme, also explained that he and Assistant Principal Donovan were "joking" about the video and look on the bystander's face. (District Ex. 2 at 26 - testimony of Shane Miller).

Dean of Discipline Clay Heald testified that many other "people were making light of the situation." (District Ex. 2 at 18 - testimony of Clay Heald).

While watching additional surveillance video that the District refused to turn over to Dr. Layfield to defend himself in this case, the District's investigators nevertheless discovered, and documented in writing in their Report, that one school dean was captured "laughing hysterically" at the expression on the faces of the bystander students in either the surveillance video or the meme. (District Ex. 2 at 9 - Matt Jones testimony; *id.* at 18 - Clay Heald testimony).

Dr. Layfield cannot and should not be unfairly singled out for finding humor in a situation that much of the rest of the administration and staff also contemporaneously found to be humorous. Of course hindsight is always 20-20 and it is easy to throw stones 9 month later. This is a regrettable situation. But in the words of the Sussex Central Teacher of the Year -

I would humbly counsel us all to recall the meekness commended by the psalmist who wrote that if there were to be kept an exact record of our transgressions, none of use would stand. Doctor Layfield is a good and decent human person, an outstanding educational leader, and someone I truly respect.

(Layfield Ex. 2 at 7).

9. The Testimony of the Young Teacher Trace DeLeon.

One final point is necessary on this charge as it relates to the viewing of the video. At the termination hearing, the youngest witness to testify was three year teacher Trace DeLeon. Several aspects of his testimony that day were:

- contrary to the testimony he previously gave on two separate occasions to

the District's own investigators, testimony that he later reviewed for errors and by his own hand signed his name to, attesting to its accuracy; and

- contrary to two independent witnesses in the room, at the same time, who observed the same actions and heard the same words he did and described what occurred materially differently than he did.

Sadly, it appears that he (like the Discipline Dean already noted above) contradicted himself and changed his prior testimony after meeting with the District's counsel, perhaps in an attempt to curry favor with his employer, the District, or out of fear of consequences to his job and educational career.

a. Contrary to Both Instances of His Prior Testimony.

At the termination hearing, this young teacher for the first time claimed that Dr. Layfield paused the video to show the exposed breast of the female aggressor student. But as this teacher begrudgingly admitted, he had never before said this to either of the two District investigators who interviewed him both immediately after the incident on May 22, 2023 and again on October 16, 2023, investigators who were specifically investigating whether there was any inappropriate conduct by and so grounds to fire Dr. Layfield. (See District Ex. 2 at 25 - testimony of Trace DeLeon). He also explained that his statement in the District's Report, that he reviewed and signed his name to just a month prior to the termination hearing, also does not contain this claim. (2/15/24 tr. at 197; see District. Ex. 2 at 25). He explained that the first time he had ever said this was in his meeting with counsel for the District, immediately prior to the hearing, 9 months after the fact. (2/15/24 tr. at 197-98, 189-90, 194).

b. Contrary to the Other Two Teacher Witnesses Who Were In the Room, at the Same Time, and Who Also Testified.

As this young teacher repeatedly testified, two additional teachers "Shane Miller and Chris Revel were in the office and saw the video at the same time he did." (District Ex. 2 at 25; 2/15/24 tr. at 182). His testimony about what Dr. Layfield did and said is contrary to the testimony in multiple interviews of both Chris Revel and Shane Miller which also are in the record.⁴³ (See District Ex. 2 at 24 and 26). Both Chris Revel and Shane Miller testified that Dr. Bradley specifically directed them to the expression of surprise on the face of the bystander student:

- Teacher Revel testified that "Bradley specifically told him to look at the expressions on the faces of the other students." (District Ex. 2 at 24 - testimony of Chris Revel).

⁴³ Each of these witnesses was interviewed twice by the District's police investigators, once in May 2023, and again later in October 2023.

- At the termination hearing he again explained that “a student making a funny face” was “pointed out to [him]” by Dr. Layfield. (2/15/24 tr. at 178 - testimony of Chris Revel).
- Teacher Miller also testified that he remembered Dr. Layfield “saying look at the expression on this girl’s face.” He explained it was “her reaction” that the focus was on. (District Ex. 2 at 26 - testimony of Shane Miller).

So in addition to being contrary to two separate instances of his own prior testimony, it also is contrary to at least four instances of the testimony of the two other persons he was there with. None of them recounted the video being paused so a naked breast could be leered at.

For all of the above reasons, this charge is UNPROVEN.

D. Charge #3 - You Do Not Respect Others.

The District here charges “[y]ou have failed to administer your duties with dignity and respect.” (District Ex. 1 at 2).

The charge is DENIED.

First, the relevant testimony, written submissions and other documentary evidence from at least fourteen (14) teachers, administrators, parents and students are in the record and strong rebut this charge. Because of the overlapping issues, that testimony is outlined in the discussion of Charge #10 below. Review demonstrates that the clear weight of the evidence is contrary to the disgruntled potshots taken by two of Dr. Layfield’s former co-workers at the hearing.⁴⁴

Second, as already detailed above, ten (10) separate District witnesses testified on at least fifteen (15) occasions that Dr. Layfield was not laughing or making fun of in any way student Aniya Harmon. Instead, their viewing of the video was directed to the looks on the faces of other students in the hallway. Their testimony corroborates Dr. Layfield’s longtime testimony of the same.

Third, as already noted above, the District’s own written Report and the testimony of numerous other District employees demonstrate that the humor found in the surprised jaw dropping looks on the faces of the many third party students in the hallway was independently widespread and commented on amongst both administrator and staff.

Fourth, as also discussed above, the ability to find humor in the stressful educational environment is a key part of surviving it.

Finally, as noted above and also addressed in Charge #7 below, the District has dropped and abandoned the charge that Dr. Layfield “w[as] a party to creating and/or permitting” “memes of staff members.” (District Ex. 1 at p. 3).

The charge is UNPROVEN.

⁴⁴ For example, as even the District’s investigators found, Donovan is not a disinterested witness. District Ex. 2 at 20 reveals a “confidential” performance issue Bradley had about her and also another “issue she had with Bradley” about time off one day. She also explained she feels like an “outsider[.]” at the school because: (1) “most of the staff there are the same age;” (2) “have been friends [since] high school;” and (3) were actually taught while in high school by her husband. (District Ex. 2 at 19). Assistant Principal Fair testified that there is one “particular person” on the administrative team who claims the joking is sometimes “inappropriate” but he denied this, explaining it was always “professional.” (District Ex. 2 at 21 - testimony of Nik Fair).

E. Charge #4 - You Mock Students and Employees.

The District next claims that there “has been an air of mockery in the building’s office under your watch, that you either tolerate or participate, towards student or employees.” (District Ex. 1 at 2).

This charge is DENIED.

First, as already noted:

- ten (10) of the District’s own witnesses corroborated Dr. Layfield’s own longtime and consistent testimony that student Harmon was not being mocked and the viewing of the video was instead directed to the looks on the faces of other students in the hallway;
- the District’s own written Report, and the testimony of numerous District employees, demonstrates that the humor in the surprised looks on the faces of the many third party students in the hallway was widespread; and
- the ability to find humor in the stressful educational environment is a key part of surviving it.

Second, as also noted, the District has dropped and abandoned the charge that Dr. Layfield creates or allows the creation of memes mocking staff members.

Third, the District has failed to offer any evidence of mockery of employees to meet its burden here.

Finally, the Reed affidavit is quite clear in denying this. (Layfield Ex. 4; see also Layfield Ex. 1, 2, 3, 5, 6). Reed states, “I’ve never witnessed an air of mockery in the office.” (Layfield Ex. 4 at ¶ 11) “I have never seen Dr. Layfield disrespect the basic dignity of students. If anything, the opposite would be true. He was forever reaching out to students for input and ways to make the school more student friendly and accommodating.” (Id. at ¶ 8).

For these reasons, this charge is UNPROVEN.

F. Charge #5 - You Asked an Employee to Lie.

The claim is that he “suggested to an employee that he be less than truthful in the investigation into these events.” (District Ex. 1 at 2).

This charge is DENIED.

1. Context - Dr. Layfield Cares About His Teachers.

Various witnesses testified about how caring and protective Dr. Layfield is of his teachers. For example -

- Teacher of the Year Robert Weber (Layfield Ex. 2 at 6 - praising the “encouragement and mentoring” and “guidance and support” that Dr. Layfield gave him as “[w]hen I was a new teacher...struggling to find my way”).
- Paraprofessional Gloria Steele (Layfield Ex. 1 at 31 - “I have never worked for a principal what genuinely cared for ... all of the staff at any other school in the entire Indian River School district. You’re one [in] at least 1,000,000.”).
- Additional evidence from multiple teachers and administrators demonstrating how much Dr. Layfield cares and watches out for his teachers is outlined in detail in the response to Charge #10 below.

2. Context - At the Time Rumors Were Swirling Around.

Bradley explained that the “rumor mill” was in motion and everyone was talking about Matt Jones disappearing. (District Ex. 2 at 7 - Layfield; District Ex. 9 at 40).

3. What Dr. Layfield Actually Said.

The District’s investigator mischaracterized Dr. Layfield’s testimony about what he said, claiming the statement was “if people are asking you about this event you might want to not talk about it or share that you saw the video,” and “You might want to forget you saw that video.” (District Ex. 2 at 7 - Layfield). But review of the actual typed transcript of that interview states something materially different.

[Invstg.] Brown: you say to Trace DeLeon, hey, you might want to forget you saw that video.

* * *

Dr. Layfield: I don’t recall using those words.

* * *

Basically I knew that [Assistant Principal] Matt [Jones] had been put on leave.

* * *

And I said, I think this thing might be growing legs, and I know how Sussex Central is with rumors. And in the context of a lot of teachers who'll be talking to other teachers and everything, I believe the essence of what I said is, you know, there's probably going to be a lot of people talking about that fight and everything that happened yesterday. So, you know, in the context, teachers and everyone are asking, you might not want to share with them that you saw the video, but in the end, you might get asked thinking maybe this will be conflated, as it has, between meme and me sharing things.... My intent was, as teachers are talking and the rumor mill goes, and as I've seen for the last six months people think there's things spread on cell phones and thing none of that ever happened.

(District Ex. 9, Nov. 7, 2023 deposition, at 39-42).

Dr. Layfield was suggesting that staff keep their heads down as there was a great storm brewing around suspended Assistant Principal Matt Jones and the much talked about meme that he created. He was suggesting that they try to keep clear of the troubles of the intraoffice rumor mill by teachers and staff talking about the suspension Jones because of the meme by not affirmatively bringing up that they had seen the video. That was his admitted "intent." But he did not tell, ask or advise anyone to lie during an investigation by superiors about whether they saw the video.

4. The Message Being Conveyed Was Clearly Understood by Some But Unfortunately Not By All.

As 10 year experienced teacher Jeff Peet testified at the hearing, everyone in the school was at the time talking about what had happened to Matt Jones.

Q. Did you learn about that [Jones] later?

A. Yes.

Q. Okay. And were there rumors going around about what had happened, why that happened.

A. People were talking, yeah.

Q. ... And is it fair to conclude that it eventually became a big deal within the school?

A. Yeah, I would say it was a big deal.

...

Q. The message you received from Dr. Layfield, do you think he was sending you a message when he said that?

A. I did interpret it as that, yes.

Q. Right, And what was the message.

A. I would say keep your head down, stay out of it.

(2/15/24 tr. at 213-15 - testimony of Jeff Peet).

As already noted above, Dr. Layfield explained what his “intent” was here - try to keep teachers who had seen the video from getting sucked into the intraoffice rumor mill surrounding Matt Jones’ suspension for creating the meme.⁴⁵ It is clear that experienced teacher Jeff Peet clearly understood Dr. Layfield’s message of “keep your head down, stay out of it.” And it is equally clear that inexperienced teacher Trace DeLeon did not as he reported to his mom.

We can all agree that this misunderstanding of his choice of words is unfortunate, but this is a thin reed on which to end a man’s decorated professional career and strip him of his livelihood, or even jail him.

5. The Inappropriateness of a Charge of Lying Here.

The District’s hands are unclean here, which suggests that something else was afoot with the pending charges. The inappropriateness of the District charging someone with lying in the context of this case is demonstrated by a review of the statements made and methods employed by the District here. In the course of trying to convict Dr. Layfield, the District has:

- submitted a last minute, sworn sham affidavit from the Dean of Discipline that is materially inconsistent with and 180 degrees the opposite of his prior sworn testimony, as the District’s own police investigator admitted at the termination hearing;⁴⁶
- offered testimony going to the very heart of the matter from an inexperienced

⁴⁵ Again, as explained in response to Charge #1 above, it was only after the late afternoon meeting where Dr. Layfield conveyed to District representative Dr. Jerns that Jones had created a meme that Jones was quickly removed and suspended from school the next morning.

⁴⁶ Q. Let’s look at paragraph 8 of Clay Heald’s sworn affidavit of February 12th: Quote, “there was no fight associated with the incident,” close quote. Is that what Clay Heald swore to?

A. Yes.

Q. Just days ago?

A. Yes.

Q. And that’s contrary to what your notes reflect. Is that correct?

A. Yes.

(2/15/24 tr. at 58 - testimony of Investigator Brown).

teacher: (1) that was directly material to what the District has been investigating Dr. Layfield for over the last 9 months; (2) which this teacher admits he never previously mentioned in his two earlier depositions with the District's own police investigators investigating the matter; (3) testimony which the teacher never added to his previous testimony despite reviewing it and attesting to its accuracy by his signature on the page a month prior to the termination hearing; and (4) which the teacher admits he only remembered to mention, for the first time ever, 9 months after the fact during his meeting with the District's lawyer the day before trial;

- long accused Dr. Layfield of viewing a meme for sexual purposes despite the fact that three of the District's own witnesses explaining in the District's own Report that there was nothing sexual about it.⁴⁷

For all of these reasons, this charge is UNPROVEN.

⁴⁷ The investigators' Report (District Ex. 2) demonstrated that the meme covered the face of the student and was blurred. (Id. at 9, 10 - testimony of Assistant Principal Jones). And, no nudity was shown either and it was not "degrading." (Id. at 15 - testimony of Assistant Principal Oliphant). "It was not clear and she did not really see the exposure of the breast." (Id. at 19 - testimony of Assistant Principal Donovan). I "didn't remember seeing any nudity in the meme." (Id. at 21 - testimony of Assistant Principal Fair).

G. Charge #6 - You Failed to Stop This Situation From Becoming a Laughingstock.

“You were a party to, and/or failed to stop, a serious student situation from becoming a laughing and mocking deviation from expectations.” (District Ex. 1 at 2).

This charged is DENIED.

The District has offered no evidence of what Dr. Layfield could have done to change this outcome or how he is at fault for its occurrence.

The situation was caused by a loosely clothed student aggressor who had to be physically hauled away from a fight by an Assistant Principal. That student fought free to return to the fight and help her fellow aggressor. In the process of the physical struggle, she caused her own exposure in the middle of a crowded hallway at the hands of the Assistant Principal, an act witnessed by dozens of students. These uninvolved students stood mouths open, laughing at the start of the school day. None of this was caused by Dr. Layfield.

Nevertheless, as teenagers do, these many student witnesses immediately sent out by text, Instagram, Twitter, and other social media, what they had just seen, laughing at the incident and spreading the word. Such circulation was not caused by Dr. Layfield. Teenagers will be teenagers.

By noon the next day, Assistant Principal Jones is removed from the school, starting another widespread round of rumors by students and by staff about what had occurred. This was not caused by Dr. Layfield in the sense in which the charge is intended.⁴⁸

At the time, and for many months thereafter, the meme was incorrectly believed to contain student nudity. But Dr. Layfield did not create the meme at issue. So this was not caused by Dr. Layfield.

All of this was uncontrollable and not the fault of Dr. Layfield.

As to the surveillance video, it was reviewed pursuant to normal District practice as confirmed by numerous administrators and staff. This was not a new policy created by Dr. Layfield.

For these reasons, this charge is UNPROVEN.

⁴⁸ Meaning that without his reporting of the existence of the meme to Dr. Jerns late that afternoon, the removal of Jones would not have occurred the next morning. But this is the sense in which the charge suggests causation.

H. Charge #7 - You Create and Permit Memes About Employees.

Here the District charged “There have been memes of staff members you were a party to creating and/or permitting.” (District Ex. 1 at 3).

This charge is DENIED.

But the District eventually dropped this charge just hours before trial on it.

Accordingly, it is UNPROVEN and has been abandoned.

I. Charge #8 - Your Actions Caused the District to Face a Lawsuit.

“The District is facing a civil lawsuit due to your actions or inactions.” (District Ex. 1 at 3).

This charge is DENIED.

First, lawsuits are an every day part of life in today’s world. It is to protect against the risk of such lawsuits that the District has insurance.

Second, certainly the Harmon family and its Philadelphia based law firm sought a quick payday with an unfounded get rich scheme. But Judge Scott has dismissed the meritless lawsuit against the District itself and whatever defense costs there were have been paid by the insurance.

Third, although Jones and Dr. Layfield remain as parties, again, the District is not on the hook here due to the insurance, and they not the District are the ones facing a possible money judgment.

Fourth, Dr. Layfield has valid defenses in the lawsuit. For example, the District is aware that Dr. Layfield did not create the meme, which is the opposite of what student litigant Harmon charges. Similarly, the District is aware from the testimony of ten (10) of its own witnesses on fifteen (15) occasions, that the video was not viewed for reasons of lechery towards the exposed breast of a student in a hallway fight which, again, is the opposite of what the lawsuit claims.

Fifth, the factual recitation in the lawsuit denies that any fight whatsoever occurred. But review of the video demonstrates, definitionally, that is false.

Sixth, it is unfair to blame dedicated staff for a lawsuit which arose out of the actions of two reckless and immature students starting a fight which could have resulted in physical injury and other violence for both teachers and students but for two staff putting their bodies before the victim to protect her. This charge is just piling on Dr. Layfield, again to make an example of him out of fear of the NAACP and its well-publicized efforts to change certain things in Sussex County.

Seventh, the actions of the District caused the lawsuit. Within days the District called the student's mother Ms. White and told her that her daughter's naked breast had been exposed and recorded at school. If that was not an invitation for the District to be sued, what would be? Nevertheless, it was not Dr. Layfield that exposed her daughter in the middle of a crowded hallway.

The national media demonstrates this in its statements and quotes from Ms. Harmon’s family. For example, as reported by the NY Times:

Ms. White, Ms. Harmon’s mother, said that she heard rumors about the meme from people who worked in the school district or in neighboring ones, suggesting

that many people were aware of it.

When a school official called Ms. White days after the fight to confirm that her daughter's breast had been exposed at school on May 17, the official did not say anything about a meme or that the footage had been shared or seen by other faculty, Ms. White said.⁴⁹

A day earlier, the Washington Post also reported:

About a week later, a school district administrator called Harmon's mother, Tosha White, confirming what she and her daughter feared about the meme, White told The Washington Post.⁵⁰

When interrogated Dr. Layfield confirmed that the District initiated the investigation by the student's family, he did not do so. "[Y]ou know, that the district, you know, went as far as to ... reached out and basically expressed to the ... Aniya Harmon that, hey, this is what happened." (District Ex. 10 - Nov. 7, 2023 deposition of Dr. Layfield at at 52, lines 12-22).

But the District has long been wrong about what happened. For example, the District long accused Dr. Layfield of creating and circulating a meme with nudity. But as explained above, that did not occur.

For these reasons, this charge also is UNPROVEN.

⁴⁹ <https://www.nytimes.com/2023/09/16/us/delaware-principal-meme-lawsuit.html>

⁵⁰ <https://www.washingtonpost.com/nation/2023/09/14/breast-meme-school-lawsuit-delaware/>

J. Charge #9 - You Conceded To a Lapse of Judgment.

The District next charges that “[y]ou have conceded to a lapse in judgment.” (District Ex. 1 at 3).

It is DENIED that this is a dischargeable offense and there is no record evidence to the contrary that a lapse of judgment leads to termination.

Certainly Dr. Layfield apologized three times in the record for the District investigators. What else could he do with the sword of Damocles hanging over him for nine months while the Attorney General makes up her mind on criminal charges against him, initiated by the haste of the District in calling in the police in just days, again probably out of fear of more racism charges being expressed in the media. Anyone would call it “a lapse of judgment” to even go to work that day and follow normal process, custom and practice. But it was no lapse of judgment in a moral sense as charged.

This charge is UNPROVEN.

K. Charge #10 - You Are Unprofessional.

The final charge is that “[y]ou have been informed in the past that your conduct is not professional.” (District Ex. 1 at 3).

This charge is DENIED.

If this means that in the past reprimands or write ups justified termination now for unprofessionalism, and this was the straw that broke the camel’s back, the evidence discussed below indicates this charge is unfounded. Moreover, since all the earlier charges have now been found to be unfounded, there is no basis for the current unprofessionalism charge.

1. Dr. Layfield’s Background.

An educator for 22 years and a 13 year administrator, Dr. Layfield had been the principal of Sussex Central High School for over 9 years, since July 2014 to the present. He is a third generation Sussex Countian and graduated from Sussex Central in 1998.

His academic degrees from the University of Delaware are a B.A. in political science education 2001; a M.Ed. in Educational Leadership 2010; and a Ed.D in Administration & Policy in 2014.

He has been employed by the District for 22 years in the following positions:

- Sussex Central social studies teacher, 2001-2009;
- Sussex Central Athletic Director, 2003-2007;
- Sussex Central Discipline Dean, 2009-2010;
- IRSD Instructional Coach, fall 2010;
- Sussex Central Assistant Principal, December 2010-July 2014; and
- Sussex Central Principal from 2014 to the present.

Besides four years as athletic director, his devotion to students and professionalism also is evidenced by his commitment to high school interscholastic athletics where he voluntarily served on the DIAA Board of Directors for 9 years, from 2013-2022, and he also was the Board Chair from 2018-2022.

2. Dr. Layfield’s Dedication and Professionalism.

a. Testimony From Numerous Employees.

Through the testimony of 12 fact witnesses with many decades of first hand experience working with and observing Dr. Layfield, the testimonial record here exhaustively addresses and rebuts the District’s false attacks about Dr. Layfield’s character and professionalism as a dedicated educator who cares deeply about his students and staff.

(1). Teachers.

(a). Teacher of the Year Robert Weber.

As any good teacher would, after first explaining the dictionary definition of “principal,” recent Sussex Central teacher of the year Robert Weber applied it and explained that -

Since I first entered the hallways of Sussex Central High School as a student teacher nearly a decade ago, Doctor Bradley Layfield has epitomized the role of a leading individual within an educational setting for me.... I quickly realized that Doctor Layfield was deeply committed to the success of the school [en]trusted to his care.

(Layfield Ex. 2 at 5). After putting in “several hours” of work before teachers and students even arrive on campus, he quickly becomes -

a visible presence within the school. He could often be found assisting students in ... finding their classrooms, offering words of encouragement to teachers, or conversing with an assortment of students in the library on a host of topics such as college admissions, career choices, current events or simply giving good advice.

(Id. at 6).

He loves learning and pursuing wisdom. Indeed, he exudes a passion for even the minutiae of knowledge that is so contagious that all around him, student and staff alike often gets swept away in the thrill of educational discovery. It was Doctor Layfield’s obvious enthusiasm for learning and his respect for the teaching profession [t]hat initially attracted me to seek employment in this district, a decision that I’m truly glad I made.

(Id.)

I would not be the educator that I am without the encouragement and mentoring of Doctor Layfield. When I was a new teacher still seeking to develop instructional skills and struggling to find my way, he showed confidence in me and offer[ed] guidance and support. When I was named Sussex Central’s teacher of the year several years ago, Doctor Layfield celebrated with me but continually pushed me to refine my teaching practice yet further and to not slacken in the quest for success. I’m certain that I’m not the only educator who has experienced this positive influence.

(Id. at 6-7). He “is a good and decent human person, an outstanding educational leader, and someone I truly respect.” (Id. at 7).

(b). Longtime Art Teacher Judith Loeber.

Presently retired but 20+ year art teacher Judith Loeber taught and worked with Dr. Layfield for many years, starting in 2001 forward. She testified that despite holding divergent views and being of different political parties, she has “kept my eye on this young man” for many years and he is “one of the good guys.” (Layfield Ex. 2 at 3).

She has abundant personal experience with him being both “empathetic and supportive” to both students and staff because “[w]e are a family at Sussex Central.” (Id. at 4). For example, she explained how if one of her “art kids” was caught doing something on video, she would be “pulled into the office” and given the opportunity to “give context to their situation or their student challenges. What is going on with them? Possible trauma or changes in home situations?” He always had “a fair point of view” and was always willing to “discuss what we need to do in the student[']s best interest to get them to move forward to be successful in school and in life.” (Id. at 3-4).

(c). Longtime Teacher and Coach John Wells.

A 29 year veteran and current teacher at Sussex Central, Coach Wells’ testimony already has been quoted extensively at section **II.C.6.b.** under Charge #2 above and is incorporated by reference. He testified that after a string of poor leadership at Sussex Central, Dr. Layfield came in and “really put the foundation down and took us to new levels in a lot of ways.” (Layfield Ex. 1 at 88). He is a “great leader” in a school that is “hard to run” for so many reasons they are difficult to describe unless you “see what’s going on day-to-day.” (Id.). “[W]hat he does at our high school, keeping us safe, being meticulous, being there all hours beyond what he should be.” (Layfield Ex. 2 at 8). He urged that the decisionmakers “[l]isten to those that are in the building that he’s worked with.” (Id. at 9). “I hold him in high regard.” (Layfield Ex. 1 at 88).

(d). Longtime Teacher and Coach Dave Marvel.

No one bleeds blue and gold in the way or is more dedicated to Sussex Central than veteran teacher and current coach Dave Marvel. (Layfield Ex. 2 at 9-12). He publicly attested to the fact that there is “[n]o way” for “anybody to think I’d be here in support of someone who might have done something or has behaved in a manner that’s bad for” Sussex Central. (Id. at 10).

He has worked in numerous capacities with Dr. Layfield for decades. (See Layfield Ex. 2 at 10-12; Layfield Ex. 1 at 9-10). He’s a “light [that] shine[s] for everybody.” (Layfield Ex. 1 at 10). “You don’t throw that []out. You don’t put that in the junkyard.” (Id.). “I believe in Doctor Bradley Layfield. (Layfield Ex. 2 at 12).

(e). Longtime Teacher Mike Adams.

30 year veteran and current Sussex Central teacher Mike Adams explained that teachers “separate ... good principals from bad princip[al]s” and Dr. “Layfield is not only a good principal, but he is the face of our franchise.” (Id. at 21).

I would go to bat for that guy every day of the week. Every month of the year.... I’m an educator who has been in this business for 30 years. And I cannot say I’ve had someone better than him.

(Id. at 22-23).

(f). Longtime Teacher Adrienne Donaway.

Current 15 year, longtime education teacher Adrienne Donaway testified that -

Doctor Layfield is the heart of our school.... He’s the first person to work in the morning ... and he doesn’t think we know it, but he’s always the first person to step up when there’s a student in need. I’ve never met anyone more dedicated....

(Layfield Ex. 1 at 5). Despite knowing and working with him for decades -

I have never witnessed him cause physical or mental harm to a student. In fact, I have, on numerous occasions, witnessed him go out of his way to help kids, get them additional services, and work their parents to assist them with their child’s behavior or learning needs.... Not once have I ever seen him behave in a manner unbecoming. I have never seen or heard of him causing harm to a student. That has never even been a rumor during my time at Sussex Central.

(Layfield Ex. 3 at 2). “I can attest to the fact that Dr. Layfield does in fact engage in professional conduct with teachers, students and parents.” (Id.).

(2). Support Staff.

(a). Cafeteria Worker Amanda Steen.

The most moving public testimony about Dr. Bradley’s professionalism, respect for and love of his students came from now retired cafeteria worker Amanda Steen.

Those kids had a lot of respect for Bradley. And he was good to those kids. Good to the staff. Never, ever heard anybody say anything bad about him. He loved that school.

(Layfield Ex. 2 at 24-25). She would go in early at 6:00 or 7:00 a.m. to get a head start on her

day but “Bradley was [already] there, walking around that whole building, checking things out. What a dedicated man. This is what he is to the school system and Sussex Central High School.” (Id. at 25).

(b). Paraprofessional Gloria Steele.

Current and experienced paraprofessional Gloria Steele has been at Sussex Central for four years and in education for more than 15. She explained “I have never worked for a principal that genuinely cared for all the students as well as all of the staff at any other school in the entire Indian River School District,” he’s “one [in] at least 1,000,000.” (Layfield Ex. 1 at 31). “Believe me, I get around that school,” arriving every morning at 6:00 a.m. and Dr. Layfield is already “walk[ing] [the] school,” as he “get[s] down to the business at hand [] and deal[s] with everything that’s thrown on [his] plate.” (Id.). The “District doesn’t have the slightest clue as to [his] value to [the] entire community.” (Id.). She views him with “great respect and admiration.” (Id.).

(3). Assistant Principals and Administrators.

(a). Assistant Principal Brice Reed.

Now retired administrator and Assistant Principal Brice Reed explained that he worked with Dr. Layfield from 2003 forward in multiple capacities, including 8 years at Sussex Central. (Layfield Ex. 4 at ¶¶ 3, 6). He testified that:

- “[a]t no time can I recall him acting unprofessional in an educational setting,” (id. at ¶ 6);
- “I can’t recall any occasions where Dr. Layfield caused harm to students,” (id. at ¶ 7);
- “I have never seen Dr. Layfield disrespect the basic dignity of students,” (id. at ¶ 8); and
- “I have never seen Dr. Layfield jeopardize the mental safety of students.” (Id. at ¶ 9).

“If anything, the opposite would be true. He was forever reaching out to students for input and ways to make the school more student friendly and accommodating.” (Id. at ¶ 8).

(b). Assistant Principal Robert Long.

Now retired 40 year administrator and former Assistant Principal has known and worked with Dr. Layfield for decades. (Layfield Ex. 5 at 1-2). They served for years “assistant principals at the same time so I had the opportunity to sit in many meetings with him and I can say he was always totally professional and very well respected by his peers.” (Id. at 2). After he was

appointed principal,

[h]e would arrive everyday at 4:30AM and would not leave until the last sporting event was over. When asked why he stated that he wanted to make sure that everything was totally ready when the students entered the building....

After spending most of my career at Sussex Central, I was in and out of the building. All you had to do is walk the halls with him and you would see how much respect and even love for him from the staff and students. By being at every event, he led by example. Everyone got to see how much pride and passion he had for Sussex Central.

The idea of him doing something so unprofessional that it would cause harm to a student is ludicrous....

I have been in and around this district for 40 years and I can promise you that you will never find someone with the love and passion and the ability to run this building like he has for the past few years.

(Id.).

b. Testimony From Parents.

(1). Jeff Burton.

Jeff Burton is a well-known Sussex County businessman, and parent of a recent Sussex Central graduate who addressed his 20 years of professional and personal experience with Dr. Layfield. (Layfield Ex. 2 at 19-20). Dr. Layfield is “an incredibly passionate man about what he does at school, the faculty, and I just think it would be a mistake to get rid of somebody that cares so deeply about the mission of the [] school district.” (Id. at 20). “[I]t is rare and hard to find somebody that is so passionate about what they do.” (Id.).

(2). Lisa Lasher.

Lisa Lasher is a local businesswoman and parent of a recent Sussex Central graduate. She described Dr. Layfield as one of a few “[g]reat men [who have] dedicated their lives to the students of the Indian River School District and to the community around it.” (Layfield Ex. 1 at 16).

c. Documentary Evidence of Dr. Layfield’s Professionalism.

Yet despite the widespread praise of his professionalism and dedication from all corners

of the Sussex County community, this administrative process has demonstrated the District's repeated failure to disclose the helpful documentary record of the same.

(1). The Limited Documents Produced by the District in a Timely Manner.

Layfield Exhibit 7 is his July 5, 2022 and July 29, 2021 evaluations which both ultimately summarize his overall performance as "accomplished." (Id. at 4, 8). One only has to review these annual performance evaluations to see that he was not on any notice of thin ice for previous misbehavior or had any warnings that his career could soon be over if he demonstrates a lack of professionalism, does not promote the well being of students (a specific rating category), or mistreats students, etc.

There are no criticisms of his professionalism or treatment of students found therein. Indeed, these evaluations are outstanding.

Dr. Owens, in the most recent evaluation, notes he "promotes each student's ... well being." (Id. at 1). He also does the same with the teaching staff: "develop[s] ... school personnel to promote each students ... well being." (Id. at 3).

His earlier evaluation for the 2020-2021 school year, by a different evaluator, was even higher, for having teaching staff "promote each student's ... well being." (Id. at 7). His leadership here with his staff was "distinguished." (Id.). Again, overall performance was "accomplished." (Id. at 8).

There are no warnings in these annual evaluations produced by the District that this was a 22 year employee on thin ice and about to be thrown out the door.

District Exhibit 7 also contained a commendation in 2021. Dated June 2, 2021, it is a commendation from Dr. Owens for succeeding in a well run graduation ceremony during a challenging period of COVID in 2021.

(2). The Additional Evaluations and Commendations the District Failed to Produce Until the Day Before the Hearing.

Unfortunately, it appears the District withheld much favorable information found in Dr. Layfield's personnel file. The respected counsel for the District was sadly misled by his client when he was informed the entire personnel file of Dr. Layfield was turned over to be used in his defense.⁵¹

⁵¹ He told Judge Carpenter - "I included in the exhibit the entirety of disciplinary-related things and commendations as well." (2/15/24 tr. at 259 counsel speaking).

When Dr. Layfield was locked out of his office in May 2023 he was denied his records which were not belatedly produced until just the day before the termination hearing as part of a large mass of assorted materials. After review, those records now are being attached as Layfield Exhibits 9 and 10. Exhibit 9 is written job evaluations by Dr. Owens for 2011 and 2013, relevant years.⁵² Exhibit 10 is 10 pages of additional commendations.

(a). Evaluations - “Exceeds” in Performance.

Exhibit 9 (attached) is evaluations in a different format by Dr. Owens when he was the building principal over Dr. Layfield. Again, for both these years, 2011 and 2013 Dr. Layfield is rated the top in all five categories, and 2013 ends with a rating of “exceeds” in performance.

(b). The Many Commendations.

Exhibit 10 (attached) contains numerous commendations attesting to Dr. Layfield’s professionalism and dedication to both students and staff.

(i). From Students.

In one graduating senior’s words in 2020:

I really want to pay homage to you as one of the best principals any student athlete could ever ask for ... you’ve been such a role model and inspiration to me and like a father figure and I couldn’t thank you enough you molded me to become the man I am today.

(Layfield Ex. 10 at 6).

In 2016, the outgoing student council president compared Dr. Layfield’s leadership to that of President John Quincy Adams because “your actions inspire others to dream more, learn more, do more and become more, you are a leader.” (Id. at 5). His “strong and caring leadership” was noted and found directly responsible for the “environment of respect, safety and effective education” experienced by all 1,500 members of the student body from every “race, nationality, [and] socioeconomic background.” (Id.) He was praised for caring about the “individual success of each student” and “his or her feeling of respect and encouragement in school.” (Id.)

(ii). From Educational Staff.

Carla Rousak, a regular substitute teacher, notes that in the opinion of staff “Dr. Layfield is ‘.. a good person.’ Dr. Layfield cares.” “Students have often said in my presence that Sussex

⁵² As part of the District’s kitchen sink approach, the District claimed that events occurring as far back as 2014 justify Dr. Bradley’s firing a decade later in 2024. (See District Ex. 7 at 1).

Central High School is Dr. Layfield’s family.” He is a “highly effective principal” and she praised his ability to inspire and his unique leadership ability. (Id. at 7-8).

(iii). From the District Superintendents & Legislators.

Here, there is a 2016 “fantastic news” commendation for taking the District through a difficult financial audit with the State. (Id. at 1).

Next is a recognition of his “leadership and expertise” undated from prior Superintendent Bunting, adding Dr. Layfield’s “above and beyond” dedication to his job. (Id. at 2).

Another undated commendation from an earlier Superintendent follows, noting “I appreciate the work that you do on a daily basis for the students and staff ... You are a valued member of the administrative team.” (Id. at 3).

Then in 2020 for the first difficult Covid graduation, Dr. Owens again commended Dr. Layfield for his “skill and professionalism.” (Id. at 4).

Two commendations close Exhibit 10 congratulating Dr. Layfield for his school receiving in 2014 the coveted State Sportsmanship Award for the good will and fairness of his athletic teams and fans throughout all of high school athletics in Delaware. (DIAA Director Charles and State Rep. Ruth Briggs King). (Id. at 9-10).

3. The District’s Limited Evidence Attacking His Professionalism.

The District’s efforts to attack Dr. Layfield as a longtime problem employee were contained in District Ex. 7 but fail for the reasons detailed below.

First is a stale claim that in March 2014, when he was still an Assistant Principal, he failed to properly notify a parent of an athlete’s suspension in the manner required by paperwork rules. (Id. at 1-2). Yet he was nevertheless subsequently promoted to Principal where, as detailed above, he served with honor and high praise for a decade thereafter. It is well-established that subsequent promotion and long distinguished service wipes out whatever limited evidentiary value such stale discipline arguably has.⁵³

Next are several claims about improper conduct during two Zoom meetings during COVID. First, a claim that Dr. Layfield had slurred speech and acted improperly during a Zoom

⁵³ See, e.g. Hugh v. Butler County Family YMCA, 418 F.3d 265, 268 (3d Cir. 2005) (when an employer chooses to promote an employee, despite knowledge of alleged deficiencies, the employer cannot later rely on these alleged deficiencies to attack the employee); Jalil v. Avdel Corp., 873 F.2d 701, 707 (3d Cir. 1989) (“satisfactory performance of duties over a long period of time leading to a promotion clearly establishe[s] his qualifications for the job.”)

meeting while he was out of the office on a well-earned vacation. (Id. at 3-4). Second, that his attempt at humor during another Zoom meeting fell flat and had the potential to be harassing. (Id. at 6).

But reliance on these incidents forgets the realities of education during COVID. As explained in section **II.C.6.a.** above, education is a stressful profession to begin with, a problem that COVID only exacerbated. And as also noted above, Dr. Layfield, along with other administrators and teachers at Sussex Central, often use humor to try to lighten the mood and relieve that stress. Dr. Layfield takes full responsibility for his attempts at humor during the second Zoom not landing as intended. But as to the former, District reliance here as justification for the employment death penalty of termination is misplaced. Dr. Layfield was on vacation at the time and there is nothing wrong with drinking at night while on vacation. Unfortunately, he also was adjusting to a new medication and he did not react well to the combination when he had to participate in a Zoom the next morning during his vacation. Again, he took responsibility for his actions, learned from them and moved on.

Yet, the District's claim that these justify his firing now is a bridge too far given that the District and current Superintendent himself have repeatedly recognized, in writing, the added stress that the COVID lockdown caused him in his role as Principal and have repeatedly praised him for his actions going above and beyond during that difficult time. In one written commendation, Superintendent Owens noted how Dr. Layfield "spent countless hours" doing "unbelievable work during this unprecedented time" to ensure that the students were taken care of, despite the fact that "I know that this has not been easy."⁵⁴ In another letter of commendation, Dr. Owens praised Dr. Layfield's ability to adapt "[d]uring a year that was unlike any we have ever experienced" to ever-changing COVID rules that kept changing planned school events.⁵⁵

Next, in 2021 the State Police SRO failed to show up to protect the football game and also the Homecoming dance leaving the entire student body unprotected. In text messages to his administrative staff he cursed out the no-show Trooper for his failure to do the important job he is paid to do. Eventually the no-show Trooper and his bosses found out about it and complained to the District. Dr. Layfield was written up for bad language. (District Ex. 7 at 5).

As noted in section **II.C.2.** above, the District repeatedly and publicly asserts that the "safety of our students" is our "top priority." Yet the no-show Trooper who was supposed to protect the safety of the 1,500+ students, and their families, at the football game and at Homecoming did not bother to show up and do his job. It is understandable that Dr. Layfield was angry that the lives of his students were endangered and expressed that anger to his trusted staff of administrators. Is not the safety of minor school students something worth getting upset about, all the more so in our current age of gun violence and school shootings?

⁵⁴ (Layfield Ex. 10 at 4 - July 1, 2020 commendation letter from Superintendent Owens).

⁵⁵ (District Ex. 7 at 9 - June 2, 2021 commendation letter from Superintendent Owens).

Last, there is the September 26, 2022 reprimand for taking to the radio waves to defend the unfair racial attacks on his brother. Despite the fact that the reprimand plainly states that the District was aware “you were not speaking on behalf of the district,” the District nevertheless chose to threaten him. This is a plainly illegal criticism of Dr. Layfield exposing the District to a federal civil rights lawsuit for violating his First Amendment rights to familial association freedom within his close-knit family, as well as his right to speak out on matters of public concern that had received widespread coverage in both the up and downstate media. (District Ex. 7 at 7-8). The District’s inclusion of this Exhibit and citation to it as grounds for firing him demonstrates the true motivation for these charges.

For all of the reasons set forth above, this charge is UNPROVEN.

III. Conclusion

For the reasons explained at length above, each of the 10 charges against Dr. Layfield lack merit and the District has failed to meet its burden of proof.

A. The Core Conduct at Issue Does Not Merit Any Liability.

The District has long claimed that this case revolves around three “very simple” to understand core actions.

1. A Meme Containing Student Nudity.

The District’s foundational and longtime charge about student nudity in the meme was abandoned the night before trial, leaving instead claims that Dr. Layfield should be blamed for creation of a meme which he did not create and that he failed to stop the viewing of a meme he did not know was being shown to anyone. But blaming Dr. Layfield for either of these things is illogical since there is a disconnect between personal action, personal knowledge and thus personal responsibility on the one hand, and the charge on the other.

More fundamentally however, blame here turns on there being something objectionable in the meme itself and then determining what is a reasonable reaction under the circumstances. But the testimony of several Assistant Principals who, similarly, briefly saw the meme in the midst of rushing around to deal with their own time sensitive job responsibilities, is in the record. Both male and female, neither saw anything in the meme meriting a report up the chain of command.

Finally, the remaining specific charge against Dr. Layfield is that he took no action whatsoever. But the facts and evidence are to the contrary. Later that same day, Dr. Layfield did in fact report the creation of the meme to a representative of the District Office who was in his office about another matter. As a direct result of his conveying of this factual information to the District, the meme’s creator was removed from the school the very next morning, a full three days prior to when he would have been removed from the school had Dr. Layfield filed a formal written report about a meme that no Assistant Principal had observed contained any objectionable content meriting a report.

2. Asking Employees to Lie.

As the glowing testimony above makes clear, Dr. Layfield is a much beloved educational figure in the Sussex County community. The testimony of numerous longtime teachers, staffers, coaches, administrators, parents and even students is in the record and exhaustively detailed above. A fair reading of that testimony is that a part of that admiration arises from the fact he invests so much time guiding, mentoring and supporting the teachers around him as they advance in their life and career paths.

Dr. Layfield reported the existence of the meme to the District late in the afternoon. The next morning Matt Jones was quickly removed from the school and no one knew what had

happened. Rumors were running rampant about the fight, the meme, what it had shown, what Jones had done in circulating it and who had a copy of it.

In that context, the District's investigators eventually specifically interrogated Dr. Layfield here about what he said, why he said it and the intent behind the words he used. He explained he was trying to protect his teachers from getting sucked into the intraoffice rumor mill about the Jones meme matter, by not volunteering they had seen the video. The video, not the meme. Remember the meme was the center of the storm that had caused the abrupt removal of Jones, the video was not (and the video would not be at issue until many months later). There was no reason to expect any investigation into the video at the time, only the meme that had gotten Jones so quickly removed. So by suggesting that persons who had not even seen the meme at all, only the video, not volunteer to other staffers that they had seen the thing not being investigated, he hoped to keep these teachers from getting sucked into an avoidable line of fire by way of the intraoffice rumor mill. He was trying to protect his people. That was "[m]y intent" he explained to the District's police investigators.

Although not determinative, it is of course important how those words were perceived. As explained above, veteran teacher Chris Revel clearly interpreted and understood the message Dr. Layfield was trying to convey - "keep your head down." The younger teacher, the one with less experience in the quicksand of workplace drama, who testified that he went to his mom about it instead of simply asking Dr. Layfield what he meant, did not interpret the message in the same way. That misinterpretation is unfortunate and Dr. Layfield regrets he did not spend more time explaining what he meant and that his ultimate choice of words could have been more clear.

But lying requires intent and there was no intent to deceive anyone about the matter then being investigated - the meme - by suggesting they keep their head down about the matter not being investigated - the video.

3. Watching a Surveillance Video.

That leaves the surveillance video of the two alarm student fight in the middle of a crowded hallway. As recently as last week, the District publicly reaffirmed its longtime position that the "safety of students" is their "top priority." The District has no policy on the use of such surveillance videos and at least seven longtime teachers, administrators and staffers - nonparties all - testified that such videos of fights are routinely shared with not just administrators and disciplinary personnel but also with teachers and staffers.

This begs the question of "why?" Why is that done? One need only review Layfield Exhibit 8, the full surveillance video, to see one of several answers to that question. First, because the "safety of students" is their "top priority," it is the responsibility of the school employees in the immediate vicinity of a fight to get involved and break it up. In this specific case, those employees were an Assistant Principal, a janitor and a person in a blue shirt (either a teacher or a constable). When the fight eventually spiraled out of control and the second radio call for help went out, it still took precious seconds for the calvary (the school resource officer, Dr. Layfield, and others) to get there to help. Fights, scuffles, shouting matches and things of

that nature happen in schools. Sometimes just seeing how your colleagues reacted to a difficult situation can be helpful in understanding how to deal with such an unexpected situation in the future.

Second, teachers and staff need to know when there are problems between specific students so they can better prevent the recurrence of such problems between the same students, and their friends, in the future.

Third, Sussex Central is a large school. As art teacher Judith Loeber explained, sometimes Dr. Layfield would simply pull her into his office to watch videos of a fight, allowing her to offer her own perspective on things that might be going on in the school, home or family life of one of the participants to better help them deal with the situation. Other teachers and staff have had similar experiences. There is wisdom in many counsel and more to be found by bringing multiple perspectives of staff who interact with these students and their friends on a daily basis around the school. Student safety is worth being proactive about.

Should surveillance videos of fights ever be shown? With no District policy in place, the historical practice was continued. And as detailed above, when Dr. Layfield was an Assistant Principal, learning the ropes under then Principal Owens, even things as private and embarrassing as student sex videos were routinely shown to large groups of administrators and staff, beyond the scope of any legitimate need to know for disciplinary purposes. Is there any more vulnerable state for the minor students involved than this? But if it is proper to show even such private sex videos with no safety implications beyond the couples involved, it is all the more appropriate to show videos of student fights in crowded hallways to as many staff with an interest in seeing them.

Importantly, just because none of the staff Dr. Layfield showed the video to on this particular occasion had any additional insights to offer about the belligerent student participants does not mean that the next time a fight occurs in the school and the video is shown to staff, that insights will not be then offered about any life and family struggles of those particular students involved. If something had actually been raised and identified by one of the staff who saw the video here - hunger, financial trouble at home, parents divorcing, abuse, etc. - Dr. Layfield would have been praised for his proactive approach to investigating student fights and going the extra mile to get to the root cause of the problem. But just because nothing was identified here on this occasion does not mean something will not be identified the next time a fight occurs. This is one of the reasons why such fight videos are reviewed.

Nevertheless, education is a stressful profession. Humor helps get one through difficult and busy days. Contrary to the District's insinuations at the hearing, at least ten witnesses explained that any laughter and joviality that occurred while watching the surveillance video was specifically directed at the jaws agape and shocked expressions on the faces of the student bystanders in the crowded hallway, not at the student aggressor who popped out of her shirt while struggling to rejoin the fight.

But is it proper to punish Dr. Layfield for finding humor in the course of doing his job?

Respectfully, Dr. Layfield was far from the only administrator, teacher or staff to find the humor in this surveillance video. Indeed, the District's own police investigators captured one administrator "laughing hysterically" about it on another surveillance video, while other witnesses testified about other administrators finding humor in the same. Is Dr. Layfield's culpability here on par with the employment death penalty of termination? No, it is not. In the words of the Sussex Central Teacher of the Year -

I would humbly counsel us all to recall the meekness commended by the psalmist who wrote that if there were to be kept an exact record of our transgressions, none of use would stand. Doctor Layfield is a good and decent human person, an outstanding educational leader, and someone I truly respect.

(Layfield Ex. 2 at 7).

4. Dr. Layfield's Professionalism.

Finally, although the District long identified the above three items as the core of the conduct at issue in this case, a fourth bears mention.

The unjustified assassination of Dr. Layfield's character by the District over the last 9 months is reprehensible. Dr. Layfield "is a good and decent ... person" (Teacher Weber - Layfield Ex. 2 at 7), "one of the good guys." (Teacher Loeber - Layfield Ex. 2 at 3). "It is rare and hard to find somebody that is so passionate about what they do." (Parent Burton - Layfield Ex. 2 at 20). He is "a dedicated man," (Cafeteria worker Steen - Layfield Ex. 2 at 25), and a "great leader" in a school that is particularly "hard to run." (Teacher Wells - Layfield Ex. 1 at 88). He is one of the "great men" in education who have "dedicated their lives to the students." (Parent Lasher - Layfield Ex. 1 at 16). "[H]e's always the first person to step up when there's a student in need." (Teacher Donaway - Layfield Ex. 1 at 5). "I have never worked for a principal that genuinely cared for all the students and staff at any other school," he's "one [in] at least 1,000,000." (Paraprofessional Steele - Layfield Ex. 1 at 31). "I'm an educator who has been in this business for 30 years...[a]nd I cannot say I've had someone better than him." (Teacher Adams - Layfield Ex. 1 at 22-23).

As exhaustively detailed in Charge #10 above, Dr. Layfield is a man who has dedicated his life to education. Review of that testimony demonstrates that from helping students in need, to mentoring teachers to enable them to be the best they can be, the youth of Sussex County have been well-served by his commitment to ensuring they emerge from Sussex Central equipped to be the productive citizens our state so sorely needs.

In a case such as this, it is exceedingly rare to see not just retirees, but current teachers and staff willing to step up and speak out against something they know is unjustified and just plain wrong. But the factual testimony of so many willing current employees rebutting these shameful attacks on Dr. Layfield's professionalism reveals that this is such a rare case. This man has given his life and entirety of his career to Sussex Central. He deserves better.

B. The Board's Choice.

1. No Prior Rule or Precedent for Termination.

The District denies it has a progressive discipline policy for 22 year or other employees and administrators which would have listed performance areas subject to discipline and warned of the consequences. So there is no prior rule or precedent for the events of May 17th being the basis for the termination of Dr. Layfield.

2. No Notice Since Past Practice is to the Contrary.

There was no notice that sharing a surveillance video according to the practice and custom of District Superintendent Owens himself, who trained Dr. Layfield, could or would be the basis for the end of one's career. Nudity has been shared quite extensively before even by Dr. Owens, and the teaching video of Dr. Layfield ending a student fight also did not blur out the identity of the student involved. There was no notice that any of those prior acts are the basis for a termination either.

3. No One Has Ever Been Terminated for This in the Past.

Counsel for the District has admitted that a dismissal for misusing surveillance video would be unprecedented in the District. In his January 24, 2024 letter to Judge Carpenter at page 5 he so admitted. When asked for "any documents demonstrating that any employee previously has been terminated for unauthorized circulation of any surveillance video," he replied that "there are no such documents" when seeking "comparator evidence of others disciplined for similar offenses."

4. Lesser Forms of Discipline Are Available.

The District wants Dr. Layfield fired. It refuses to consider a 30 day suspension without pay, transfer to another position, or any result other than termination. But on the record of a 22 year dedicated employee, and the weight of evidence presented favoring Dr. Layfield, termination is unjustified and would be arbitrary and capricious. If there were any violations only discipline short of termination should be considered.

C. What Was Really Involved Here.

The political problems facing this School Board in the 2022-2023 school year arising from racism charges at a football game were unprecedented. The District earlier took political heat for a racial incident involving its Board president who neither lost his police job nor was he censured as Board president. And now a Black female was part of a meme allegedly circulated on school premises. The District then faced a second racially driven volcano set to explode downstate and politically it needed to look like it had clean hands. Dr. Layfield was chosen to be a scapegoat, to join the meme creator Jones, so the District would look tough and unbiased.

While the subsequent facts have exonerated Dr. Layfield from creation or circulation of the meme, and the night before the hearing the District admitted there was no nudity in it either, the District has obdurately stuck to its story with charges which neither hold up to analysis nor justify a termination. Dr. Layfield is being made an example with the overblown charges which were filed against him. Whatever his offenses on May 17th, they do not warrant dismissal with any employer except one that is acting arbitrarily and irrationally for illegitimate purposes to stop criticism of it by the NAACP.

For example, the entire state chapter of the NAACP is involved. “President Richard Smith is demanding *an investigation of the school district's treatment of its Black students* as well as for charges to be filed. ‘We are basically calling for the Attorney General to look deeper into it and come up with the right charges to charge these two,’” Smith said. “They should never ever work in another school in their life.”⁵⁶ A former president of the Lower Sussex County NAACP has also demanded that Dr. Layfield lose his job.⁵⁷

It is a fair conclusion that the state NAACP now is involved because of dissatisfaction over the fact that Rodney Layfield was not disciplined by the School Board. A second racial incident in this school district now is causing embarrassment politically and Dr. Bradley Layfield is being made a scapegoat with the overblown charges which were filed against him so hastily as to feed *a narrative of the naked breast of a young Black woman was being leered at and mocked by White administrators in a widely circulated meme*. But the facts are to the contrary.

All of these charges should be rejected.

Respectfully Submitted,

THE NEUBERGER FIRM, P.A.

/s/ Thomas S. Neuberger

THOMAS S. NEUBERGER, ESQ. (#243)

17 Harlech Drive, P.O. Box 4481

Wilmington, Delaware 19807

(302) 655-0582

TSN@NeubergerLaw.com

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Attorney for Dr. Bradley Layfield

⁵⁶ See www.delawareonline.com/story/news/local/2023/09/12/lawsuit-sussex-central-principals-made-meme-of-students-exposed-breast-delaware/70830630007/

⁵⁷ See www.coastalpoint.com/news/education/board-of-ed-investigating-layfield-s-future/article_e47e5622-79a6-11ee-b2ed-0337671fa1c3.html