

James S. McGonigle

<p style="text-align: right;">Page 142</p> <p>1 A. I don't know.</p> <p>2 Q. And did she describe it as something</p> <p>3 that was disruptive?</p> <p>4 A. That she had to redirect the children,</p> <p>5 yes.</p> <p>6 Q. That she needed to redirect the</p> <p>7 children to what?</p> <p>8 A. To stop.</p> <p>9 Q. That she had to tell them to stop</p> <p>10 talking?</p> <p>11 A. Yes.</p> <p>12 Q. And what was her class?</p> <p>13 A. I don't recall. It was adolescent</p> <p>14 skills, skills for adolescents or writing skills</p> <p>15 for adolescents.</p> <p>16 Q. Okay. Did they stop when she told them</p> <p>17 to?</p> <p>18 A. Not the first time.</p> <p>19 Q. She had to tell them twice?</p> <p>20 A. Yes.</p> <p>21 Q. So she came up to you and said, I had</p> <p>22 to tell these kids two times to stop talking about</p> <p>23 this?</p> <p>24 A. I don't think she used the words two</p>	<p style="text-align: right;">Page 144</p> <p>1 you about students talking about the incident</p> <p>2 in 9th period?</p> <p>3 A. No. I'm not sure if it was 9th period.</p> <p>4 It was towards the end of the day.</p> <p>5 Q. That's what he told you?</p> <p>6 A. It was during a class where the kids</p> <p>7 were working and he told me that several times kids</p> <p>8 were disruptive, they had to be told to be quiet</p> <p>9 more than, he said, a couple of times, I don't</p> <p>10 remember the exact number, and they wouldn't stop</p> <p>11 until he finally yelled.</p> <p>12 Q. So he had to yell at them to get them</p> <p>13 to stop talking?</p> <p>14 A. Yes.</p> <p>15 Q. Is he typically somebody nobody listens</p> <p>16 to?</p> <p>17 A. No.</p> <p>18 Q. And did he identify the students?</p> <p>19 A. He identified them, but I do not</p> <p>20 remember their names.</p> <p>21 Q. Do you remember if they were men or</p> <p>22 women?</p> <p>23 A. They were both.</p> <p>24 Q. And do you know, if kids don't listen</p>
<p style="text-align: right;">Page 143</p> <p>1 times. I think she said more than once.</p> <p>2 Q. Okay. And had it just occurred?</p> <p>3 A. I'm sorry.</p> <p>4 Q. Had it just occurred; had the incident</p> <p>5 just occurred where she had to ask them two times</p> <p>6 to stop talking?</p> <p>7 A. I don't understand your question.</p> <p>8 Q. Did you have the impression that she</p> <p>9 was reporting this incident to you immediately</p> <p>10 after it had occurred?</p> <p>11 A. No. She did not because she would be</p> <p>12 teaching for the first four periods and could not</p> <p>13 get to me until period five, when I had my lunch.</p> <p>14 Q. So it could have been the first period</p> <p>15 or the fourth period, we just don't know?</p> <p>16 A. Yes. I don't know.</p> <p>17 Q. Okay. She didn't identify the</p> <p>18 students?</p> <p>19 A. Not to my recollection.</p> <p>20 Q. However, she did see them and can</p> <p>21 identify them today, if we asked her?</p> <p>22 A. I don't know.</p> <p>23 Q. And then the second incident that you</p> <p>24 told me about was with Mr. Nunemacher and he told</p>	<p style="text-align: right;">Page 145</p> <p>1 to their teachers when they tell them to be quiet</p> <p>2 in class, do they get detention; what happens</p> <p>3 usually?</p> <p>4 A. It depends. Each situation is</p> <p>5 different.</p> <p>6 Q. Were these children sanctioned</p> <p>7 for their failure to listen to their teachers?</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. That's an individual teacher's</p> <p>11 decision.</p> <p>12 Q. And when do teachers normally make a</p> <p>13 decision to discipline students who don't listen to</p> <p>14 them?</p> <p>15 A. It depends on the teacher.</p> <p>16 Q. How about Mr. Nunemacher?</p> <p>17 A. Mr. Nunemacher handles things very well</p> <p>18 in his class.</p> <p>19 Q. Which means?</p> <p>20 A. Which means he has very little</p> <p>21 discipline problems.</p> <p>22 Q. But this is one where he actually told</p> <p>23 you that he had to, like, yell?</p> <p>24 A. Yes.</p>

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1 **Q. But he chose not to discipline these**
 2 **children?**
 3 A. I can't speak for Mr. Nunemacher.
 4 **Q. How about the other teacher?**
 5 A. I can't speak for her either.
 6 **Q. Did she discipline anybody?**
 7 A. To my knowledge, I don't know.
 8 **Q. How would you find out?**
 9 A. I would ask her.
 10 **Q. There's no list of who had detention at**
 11 **school or anything like that?**
 12 A. From this year?
 13 **Q. Would they maintain a list of who's**
 14 **getting detention?**
 15 A. No. The Assistant Principal would have
 16 that list.
 17 **Q. And did he maintain it and still have**
 18 **the list from the prior school year?**
 19 A. No.
 20 **Q. What does he do; does he throw it out?**
 21 A. I don't know what he does with it.
 22 **Q. So you don't know; he might have it?**
 23 A. I know he doesn't have it.
 24 **Q. Let me ask you a question, did anybody**

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1 **instruct the school or did you instruct your staff**
 2 **that they were to hold onto documents once this**
 3 **litigation was filed?**
 4 A. Hold onto what specific documents?
 5 **Q. Any documents relating to Jill or to**
 6 **this MySpace or to any activities or any alleged**
 7 **disruptions in the school?**
 8 A. No.
 9 **Q. No instruction like that was given to**
 10 **the staff?**
 11 A. No.
 12 **Q. So everybody continued with whatever**
 13 **their personal document retention practices were in**
 14 **terms of what they kept and what they threw out?**
 15 A. I can't speak for anybody else.
 16 **Q. Okay. Now, other than those two**
 17 **instances, were there any other instances, before**
 18 **you suspended Jill, relating to this MySpace page?**
 19 A. Not to my knowledge.
 20 **Q. Any that came to you through hearsay,**
 21 **that you didn't see or didn't witness, other than**
 22 **the two instances that you just told me about?**
 23 A. Not to my knowledge.
 24 **Q. How about after you disciplined her,**

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1 **starting with that day, were there any disruptions,**
 2 **what you consider to be disruptions after that?**
 3 A. Yes.
 4 **Q. And what were they?**
 5 A. Well, the day that both Kristina and
 6 Jill came back to school, their lockers were
 7 decorated congratulating them, which created quite
 8 a buzz and a stir in the eighth grade hallway with
 9 about 20 to 30 students in a circle that had to be
 10 broken up by teachers.
 11 **Q. And what were they being congratulated**
 12 **for; did they say for what?**
 13 A. Yes.
 14 **Q. For coming back to school or what was**
 15 **it for?**
 16 A. No. They were being congratulated for
 17 what they did to me.
 18 **Q. Okay. And did you discipline the**
 19 **students who had done that to their lockers?**
 20 A. Yes.
 21 **Q. Who were the students?**
 22 A. I don't recall -- yes, I do.
 23 **Q. Who were they?**
 24 A. Sarah Bambrick (phonetic), Kelsey -- I

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1 can't think of Kelsey's last name off the top of my
 2 head.
 3 **Q. Was it just two kids?**
 4 A. Yes.
 5 **Q. And what was their discipline?**
 6 A. They were severely reprimanded and
 7 their parents were called, contacted.
 8 **Q. Any suspension?**
 9 A. No.
 10 **Q. And that was for congratulating Jill**
 11 **for doing this MySpace page?**
 12 A. Jill and Kristina.
 13 **Q. Because they were congratulating both**
 14 **of them, they were severely reprimanded and their**
 15 **parents were called to school?**
 16 A. Not to school. They were called from
 17 school.
 18 **Q. You called them on the phone?**
 19 A. I don't know how else you would call
 20 them.
 21 **Q. And that's the only discipline?**
 22 A. Yes.
 23 **Q. What exactly -- do you remember the**
 24 **words that were on the lockers?**

<p style="text-align: right;">Page 150</p> <p>1 A. No. I do not. 2 Q. Did anyone take a picture? 3 A. No. 4 Q. How did it come to your attention? 5 A. The teachers told me. 6 Q. Which teachers? 7 A. Mrs. Kerstetter and Mr. Ebling. 8 Q. And are they still employed? 9 A. Yes, they are. 10 Q. And was the stuff removed from the 11 locker? 12 A. Yes. 13 Q. Who removed it? 14 A. The teachers. 15 Q. How long was it on the lockers before 16 it was removed? 17 A. I don't know. 18 Q. Do you know whether Jill ever saw it? 19 A. Yes. 20 Q. How do you know? 21 A. They were in the middle of the huddle 22 where their lockers were. 23 Q. Were they big signs, little signs? 24 A. They were, they looked like</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Who did you ask? 2 A. Both the kids. 3 Q. Which kids? 4 A. The ones who put up the signs. 5 Q. And they told you that -- tell me what 6 they told you. 7 A. They told me that -- I asked them what 8 the reason they did it was and they said they were 9 congratulating them on what they did. They didn't 10 mean to hurt me, but they didn't think it was 11 right, the fact that I suspended them. 12 Q. Okay. But the only thing that was 13 visible to the other students was congratulations 14 and the names of the girls? 15 A. I don't know what else it said. 16 Q. But that's all you saw? 17 A. Right. 18 Q. Any other post suspension disruptions? 19 A. Directly related to this? 20 Q. Well, I guess, if you can parse it that 21 way? 22 A. Nothing that I can prove. 23 Q. What are things that you suspect might 24 be related to this?</p>
<p style="text-align: right;">Page 151</p> <p>1 construction paper with confetti and ribbons and 2 bows and stuff like that. 3 Q. But you don't remember the words 4 though? 5 A. Yeah; congratulations. 6 Q. Just congratulations? 7 A. Congratulations is the only one I 8 remember off the top of my head, and their names. 9 Q. Congratulations, love Sarah and Kelsey, 10 or congratulations Jill and Lehman girl? 11 A. Yes. 12 Q. Could it have been that they were 13 congratulating them for surviving their detention 14 and -- 15 A. No. They didn't have detention. They 16 were suspended. 17 Q. Could it have been they were 18 congratulating them for surviving their suspension 19 then? 20 MR. RIBA: Objection. 21 A. No. 22 Q. Did you ask what the congratulations 23 were for? 24 A. Yes.</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. MCGONIGLE: Can I meet with my 2 lawyer? 3 MS. KOHART: Of course. 4 (At this point, a recess was taken and 5 Mr. Riba and the witness conferred outside 6 the deposition room.) 7 BY MS. KOHART: 8 A. Some of the things that I suspected -- 9 you have to remember that I was doing two jobs at 10 one time, being the Assistant Principal and the 11 Principal. What I saw, after the suspension came, 12 after the students got wind of the Court case in 13 Scranton, was that discipline in the middle school, 14 especially in the 8th grade class, deteriorated 15 severely. 16 Q. And that was the after the Court case 17 was filed? 18 A. Yes. That was after the Court case. 19 It went to -- as a matter of fact, I lost my 20 Assistant Principal -- I didn't lose him. He took 21 another job in the District. For the last 60 days 22 of the school year, I focused on saying, I'm going 23 to do both these jobs myself and bring somebody in 24 fresh and new at the end of the year. The</p>

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1 discipline had gotten that bad that I finally went
 2 to the Superintendent and the School Board and
 3 said, I need help.
 4 **Q. Was the lawsuit publicized in the**
 5 **newspaper?**
 6 A. Absolutely.
 7 **Q. And is it your view that that sort of**
 8 **got the students rallied against the administration**
 9 **for some reason?**
 10 A. Are you asking my opinion?
 11 **Q. Yes.**
 12 A. In my opinion, there's no question in
 13 my mind.
 14 **Q. But they were supportive of Jill and**
 15 **felt she'd been treated unfairly or -- what did you**
 16 **think they were thinking, what your view is?**
 17 MR. RIBA: Objection.
 18 A. I don't think everybody was in favor of
 19 it, especially, since somebody came and told me
 20 about it. A lot of people and a lot of parents
 21 called and supported what I did and couldn't
 22 believe the actions that were being taken and how
 23 parents could do something like this and teach
 24 their child such a lesson.

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1 **Q. But how about the kids that were being**
 2 **disruptive, what is your view of what was going**
 3 **through their heads?**
 4 A. My view was that no matter what they
 5 did, they would say, we can do what we want. I'm
 6 taking you to Court.
 7 **Q. That's what you thought the kids were**
 8 **doing?**
 9 A. There's no question that's what I
 10 thought they were doing.
 11 **Q. Okay. The kids thought, because of**
 12 **their ability to file a lawsuit, they could stop**
 13 **obeying the rules of the school?**
 14 A. Yes; especially the 8th grade.
 15 **Q. And they're graduated now?**
 16 A. They're in 9th grade.
 17 **Q. Does the high school start in 9th**
 18 **grade?**
 19 A. Yes; 9th grade.
 20 **Q. They're across the green here; is that**
 21 **right?**
 22 A. Actually. They're about four miles up
 23 the road?
 24 **Q. Is that the elementary school here?**

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1 A. Right.
 2 **Q. Okay. Anything else that you suspected**
 3 **was related to the MySpace page?**
 4 A. Regarding me?
 5 **Q. No. I'll talk to you about that. I'm**
 6 **just asking in terms of your ability to fairly**
 7 **administer the school after the suspension?**
 8 A. Just what I just testified to.
 9 **Q. Nothing else?**
 10 A. No.
 11 **Q. Now, let's talk a little bit about the**
 12 **-- by the way, did it come to your attention that**
 13 **-- let me just go back one moment to the Guidance**
 14 **Counselor that had to come in and sit with you**
 15 **while you were disciplining Jill and the Lehman**
 16 **child.**
 17 **You swapped out her for your wife so**
 18 **your wife wasn't the person witnessing the**
 19 **discipline?**
 20 A. Right.
 21 **Q. Is it normally your practice to have a**
 22 **Guidance Counselor come to your office whenever**
 23 **discipline has to be meted out to a child?**
 24 A. In this case, with no Assistant

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1 Principal, yes.
 2 **Q. So otherwise it would be the Assistant**
 3 **Principal or, in this case, he wasn't there, so**
 4 **it's a Guidance Counselor?**
 5 A. It also depends on -- every situation
 6 is different, but I always have somebody else
 7 present if it's a serious discipline matter.
 8 **Q. And what students -- did the Guidance**
 9 **Counselor have to change appointments in her**
 10 **office?**
 11 A. Yes.
 12 **Q. What appointments were changed?**
 13 A. It was 8th grade scheduling for the 9th
 14 grade.
 15 **Q. And was that class cancelled?**
 16 A. It's not a class.
 17 **Q. What is it?**
 18 A. It's when students come in and meet
 19 with the Guidance Counselor to go over their 8th
 20 grade schedule.
 21 **Q. And which students were meeting with**
 22 **the Guidance Counselor at that time?**
 23 A. I have no idea.
 24 **Q. Did they tell you that they had to**

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1 **cancel a meeting?**
2 A. I knew they had to.
3 **Q. Did they tell you?**
4 A. That day?
5 **Q. Right.**
6 A. No.
7 **Q. So they had on their calendar, how many**
8 **students do you think were coming in for**
9 **scheduling?**
10 A. During that brief amount of time, I
11 don't know, two.
12 **Q. All right. So already one of them was**
13 **slated to be out of the office supervising testing**
14 **and the other one was in the office and she had**
15 **probably expected to be meeting with two students**
16 **and she had to cancel those meetings to meet with**
17 **you and the children?**
18 A. No.
19 **Q. What happened?**
20 A. She had to cancel those meetings to
21 administer the makeup test and then the makeup
22 tests were over and that's when I brought
23 Mrs. Frain in and Jill apologized to her?
24 **Q. I'm sorry. I'm talking about when you**

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1 **disciplined Jill on Thursday morning?**
2 A. Okay.
3 **Q. You had Mrs. Guers?**
4 A. Yes.
5 **Q. And Mrs. Guers was supposed to**
6 **administer the testing, correct, and you swapped**
7 **her out with your wife?**
8 A. No. She was already administering the
9 testing.
10 **Q. So you pulled her out of that?**
11 A. Yes.
12 **Q. And sent your wife in?**
13 A. Yes. The students were called down in
14 the beginning of the day.
15 **Q. Now, did your wife have to cancel**
16 **appointments because she needed to go supervise the**
17 **testing?**
18 A. Yes.
19 **Q. Which appointment did she cancel?**
20 A. Who in particular, I don't know.
21 **Q. But do you think it might have been**
22 **two?**
23 A. My guess would be two.
24 **Q. Now, Mrs. Guers, she had no**

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1 **appointments on her calendar?**
2 A. No. Her job was to administer the
3 test.
4 **Q. All right. Do you know whether they**
5 **have records of which student meetings they**
6 **cancelled?**
7 A. I don't know.
8 **Q. Are the students' meetings published on**
9 **a written document so that you know that Jones or**
10 **Adams is supposed to meet with you on a certain**
11 **morning?**
12 A. No.
13 **Q. Is it always a one-on-one meeting?**
14 A. Is what one-on-one?
15 **Q. Do the students meet one-on-one with**
16 **the Guidance Counselors to discuss their schedules?**
17 A. Well, the parents come in as well.
18 **Q. What parents were at the school that**
19 **morning?**
20 A. There's twofold meetings. One is an
21 initial with the student to get an idea of what
22 they want to take.
23 The second one is with the parent and
24 the student to actually finalize the schedule.

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1 **Q. And which meetings were cancelled that**
2 **morning?**
3 A. The student counselor meetings.
4 **Q. So it was just with students, no**
5 **parents?**
6 A. Correct.
7 **Q. And it's a one-on-one meeting, Guidance**
8 **Counselor and student?**
9 A. Yes.
10 **Q. How would I find out which students**
11 **were cancelled?**
12 A. I have no idea.
13 **Q. Do you know whether there's any records**
14 **in the Guidance Counselor's office that would tell**
15 **us that?**
16 A. I would highly doubt it.
17 **Q. Where do the students go if their**
18 **meeting is cancelled?**
19 A. Back to class.
20 **Q. So they're being pulled out of class to**
21 **meet with a Guidance Counselor for how long?**
22 A. It varies. It depends on who you have.
23 **Q. So the meetings aren't a set, like, 30**
24 **minutes, I have to sit with this child for 30**

<p style="text-align: right;">Page 162</p> <p>1 minutes; it could a 10 minute meeting, depending on 2 the kid?</p> <p>3 A. It could be from 10 to 30. Some kids 4 like to talk more than that.</p> <p>5 Q. And presumably, the Guidance Counselors 6 would have records about whose meeting had to get 7 cancelled that morning?</p> <p>8 A. For this year, I know they would, but I 9 don't know if they keep their logs.</p> <p>10 Q. And as far as you know, nobody 11 instructed people to maintain records relating to 12 this incident, right?</p> <p>13 A. No.</p> <p>14 Q. How do they maintain these meetings; do 15 they have written logs in the office about who's 16 coming in when?</p> <p>17 A. They have it on their calendar of who's 18 coming in. They send out passes in the morning to 19 the kids.</p> <p>20 Q. So the kids, would they, for example, 21 if you're going to meet with five children and one 22 kid is only 10 minutes, would the second child then 23 be called out of class right then or does the pass 24 tell them what time to come?</p>	<p style="text-align: right;">Page 164</p> <p>1 A. No.</p> <p>2 Q. This was after you said, the Lehmans, 3 at least, were very remorseful; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. But you still didn't think the 6 seriousness had been impressed upon the Lehmans?</p> <p>7 A. The mother, yes. The child, no.</p> <p>8 Q. And did you think the seriousness had 9 been impressed upon the Snyders?</p> <p>10 A. No.</p> <p>11 Q. So you wanted the State Police to make 12 sure that happened, right?</p> <p>13 A. Yes.</p> <p>14 Q. This was the same conversation you 15 already told me about, right; in other words, this 16 is all part of that one meeting with the State 17 Police Officer?</p> <p>18 A. No.</p> <p>19 Q. He didn't suggest to you that you move 20 this heavy handed?</p> <p>21 A. No; not at all.</p> <p>22 Q. Had you already told him -- had he 23 already told you, you know, it's going to get 24 thrown out of Court, this isn't really something</p>
<p style="text-align: right;">Page 163</p> <p>1 A. The pass.</p> <p>2 Q. Was there any other disruption of 3 anyone's schedule, other than what you've told me 4 now about the Guidance Counselors?</p> <p>5 A. No.</p> <p>6 Q. Any other disruptions in the school, 7 other than the things we've already gone through?</p> <p>8 A. No.</p> <p>9 Q. By the way, did you ask the State 10 Police to place calls to the parents of the Lehmans 11 and the Snyders and have the children brought down 12 to the police barracks for an interview?</p> <p>13 A. Did I ask them?</p> <p>14 Q. Yes.</p> <p>15 A. No. They asked me.</p> <p>16 Q. What did they ask you -- who is the 17 they?</p> <p>18 A. One police officer.</p> <p>19 Q. What did he ask you?</p> <p>20 A. Would you like for us to call them down 21 and just let them know how serious this was and 22 their parents, and I said yes.</p> <p>23 Q. And you don't think they already knew 24 that?</p>	<p style="text-align: right;">Page 165</p> <p>1 you could bring criminal charges about?</p> <p>2 A. I don't remember.</p> <p>3 Q. Did he report back to you?</p> <p>4 A. I answered that before, no. He didn't.</p> <p>5 Q. Did you know he was going to do it?</p> <p>6 A. I just took him at his word.</p> <p>7 Q. And did you hear that he did do it?</p> <p>8 A. No. Eventually, I did hear. I don't 9 remember when I heard it. It might have been 10 through depositions or through the Court case. I'm 11 not sure.</p> <p>12 Q. Now, since the exposure of this MySpace 13 page, has anybody suggested to you that they think 14 that any of these allegations on here against you, 15 which you claim to be allegations against you, are 16 true; have they suggested that you ought to be 17 investigated or that anything on here is an 18 accurate statement about you?</p> <p>19 A. Not to my knowledge.</p> <p>20 Q. Have you had, other than the events 21 we've already discussed, have there been any 22 consequences to you as a result of this MySpace 23 page?</p> <p>24 A. Define consequences.</p>

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1 Q. Well, have they started investigating
2 you under State law because there's been
3 allegations of child abuse or have you gotten any
4 discipline, administratively, from the school
5 district because of accusations that you hit
6 children or anything of that nature?
7 A. No.
8 Q. Anything else that you would call a
9 repercussion as a result of this MySpace page?
10 A. Besides from my health?
11 Q. Aside from your health, yes. We'll
12 talk about your health.
13 A. No; nothing else.
14 Q. And you say your health has suffered as
15 a result of the MySpace page?
16 A. Absolutely.
17 Q. What has happened to your health?
18 A. Sleep, lack of sleep, chest pains after
19 the Court case in Scranton.
20 Q. Anything else?
21 A. No.
22 Q. Do you know about when the web page was
23 taken down off of MySpace?
24 A. I had to take it down.

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1 Q. You had to?
2 A. Yes.
3 Q. Why did you have to?
4 A. I didn't have to. I just did. After I
5 found out who did it, I called.
6 Q. And you don't know whether if you'd
7 asked Jill to take it down, that she would have
8 accommodated you?
9 A. Well, I think the damage was already
10 done.
11 Q. That wasn't my question, sir.
12 A. I took it down.
13 Q. You took it down because you took it
14 down, correct?
15 A. Correct.
16 Q. And you hadn't already asked somebody
17 else, other than MySpace, to take it off, correct?
18 A. Repeat the question, please.
19 Q. You hadn't asked Jill to take it down,
20 right?
21 A. No.
22 Q. You hadn't asked the Lehman girl to
23 take it down, right?
24 A. No.

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1 Q. You just asked MySpace to take it down?
2 A. Right.
3 Q. And they said no, correct?
4 A. No. They said yes, after I had the
5 information.
6 Q. Okay. Once they had the information,
7 they took it down, at your request, even without a
8 Court Order?
9 A. The Court Order had to do with whose
10 computer it came from, not whether to take it down.
11 Q. Okay. So now that you knew the
12 computer, all you had to do was give them the
13 U-R-L, right?
14 A. Right.
15 Q. Once you had that U-R-L number, they
16 took it down?
17 A. Yes.
18 Q. When did you make that call?
19 A. It was shortly after the Snyders left
20 my office.
21 Q. Why didn't you call the previous day
22 when Brianna gave you the MySpace page?
23 A. Because I had to find out who it was
24 and if I needed a Court Order, I was going to try

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1 to get one. I needed to find out whose computer it
2 came from.
3 Q. They needed a U-R-L and the identity of
4 the computer?
5 A. Yes. The U-R-L is only going to give
6 you the site. The identity of the computer has to
7 come through a Court Order.
8 Q. How did you get the identity of
9 Jill's computer?
10 A. I didn't.
11 Q. You said it was Jill Snyder's computer.
12 A. No, I didn't. I never said any of
13 that. I asked Jill if we should call MySpace, and
14 I bluffed, because I needed a Court Order, and
15 that's when she admitted to it.
16 Q. I'm sorry. You're misunderstanding.
17 You called MySpace and said, Mr. MySpace, take this
18 web page down, right?
19 A. Which day are we talking about?
20 Q. On Thursday?
21 A. Yes.
22 Q. And they accommodated you?
23 A. Yes, they did.
24 Q. And what information did you give them;

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1 you gave them the U-R-L, right?
 2 A. Yes. That was it.
 3 Q. On Thursday?
 4 A. On Thursday.
 5 Q. But you had the U-R-L the day before,
 6 right?
 7 A. Correct.
 8 Q. Why couldn't they take it down before
 9 that?
 10 A. Because they needed to leave the page
 11 up there in case I got the Court Order to trace
 12 back which computer it came from.
 13 Q. I see. You didn't want them to take it
 14 down?
 15 A. Not at that time because I needed to
 16 find out who did it.
 17 Q. Now, I understand.
 18 So the next day you said, go ahead,
 19 take it down, I found the culprit?
 20 A. Yes.
 21 Q. And was it taken down promptly?
 22 A. Yes.
 23 Q. How do you know that?
 24 A. I checked.

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1 Q. How long after your call did you check?
 2 A. How long it would take me to log on,
 3 maybe a minute.
 4 Q. And it was already gone?
 5 A. Yes.
 6 MS. KOHART: I think I have nothing
 7 further.
 8 ---
 9 EXAMINATION
 10 ---
 11 BY MR. RIBA:
 12 Q. Jim, Counsel, during her questioning of
 13 you, made a statement that she was concerned
 14 because Jill received the same 10 day suspension as
 15 a quote, "knife wielding kid", end quote.
 16 My first question is, was there ever a
 17 knife wielding kid in Blue Mountain School
 18 District?
 19 A. Define wielding?
 20 Q. I don't know, a kid with a knife
 21 attacking someone.
 22 A. No. In Blue Mountain School District,
 23 I can't answer that question. In Blue Mountain
 24 Middle School, there has not been.

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1 Q. There's never been a kid wielding a
 2 knife at someone?
 3 A. No.
 4 Q. So, in essence, there's never been a 10
 5 day suspension for a kid wielding a knife in Blue
 6 Mountain Middle School?
 7 A. That's correct.
 8 Q. The suspension for the knife was merely
 9 possession of the knife; is that correct?
 10 A. Yes.
 11 Q. The 10 day suspension?
 12 A. Yes.
 13 Q. So a kid brought a knife to school,
 14 didn't harm anybody, maybe he never brought it out
 15 of his bag, you found out about it and he gets a 10
 16 day suspension; is that correct?
 17 A. Yes.
 18 Q. He never uses it on anybody and he
 19 still gets the 10 day suspension?
 20 A. Correct.
 21 Q. How about the alcohol, is the 10 day
 22 suspension merely for possession in the cases that
 23 you talked about?
 24 A. Yes.

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1 Q. Didn't consume it on the school
 2 property, just had it present and you found out
 3 about it and the kid got a 10 day suspension?
 4 A. Yes.
 5 Q. Did it harm anybody else?
 6 A. No.
 7 Q. He just had it?
 8 A. Yes.
 9 Q. It didn't invade someone's privacy?
 10 A. Yes. It did not.
 11 Q. Counsel, during her questioning, had a
 12 concern about you being a Judge and Jury in this
 13 case and you had testified that, in fact, there's
 14 two Judges above you, two appeal Judges; is that
 15 correct?
 16 A. Yes.
 17 Q. There's a Superintendent, who's the
 18 appeal Judge, and then there's the Board, who's the
 19 appeal Judge; isn't that correct?
 20 A. Yes.
 21 Q. And, in fact, you were here during
 22 Mrs. Snyder's deposition; were you not?
 23 A. Yes, I was.
 24 Q. And do you recall her testifying that

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1 she, in fact, appealed your sentence to Dr.
2 Romberger and Dr. Romberger indicated that she was
3 standing by your suspension?
4 A. Yes.
5 Q. Counsel, during her questioning, made a
6 point to say that she was concerned about how angry
7 you were and the fact that you might pursue a civil
8 case against the Snyders and the Lehmans; do you
9 recall that?
10 A. Yes.
11 Q. Jim, did your anger play any role in
12 the suspension that you handed down to the Snyders
13 and Lehmans?
14 A. No.
15 Q. You got the approval of your
16 Superintendent for the 10 day suspension?
17 A. Yes.
18 Q. The kids admitted they did this, didn't
19 they, that they created the website?
20 A. Yes.
21 Q. And you were here for Jill Snyder's
22 deposition?
23 A. Yes.
24 Q. And you were here when she admitted,

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1 under oath, that she knew what she was putting on
2 there about you was not true?
3 A. Yes.
4 Q. You were here when she admitted that
5 the information contained on this website was false
6 about you?
7 A. Yes.
8 Q. And you testified as to what you
9 believe were accusations made about you?
10 A. Yes.
11 Q. How many years have you been an
12 Administrator, Jim?
13 A. Exact days or roughly?
14 Q. Just years.
15 A. Ten.
16 Q. How long have you been Principal here
17 at the middle school?
18 A. Acting or Principal.
19 Q. Just combined.
20 A. Combined, five years.
21 Q. Do you feel that -- well, the timeline
22 we went through with Counsel indicated that action
23 was a taken within two or three days of the
24 creation of the website, correct?

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1 A. Yes.
2 Q. And you were here when both Kristina
3 and Jill testified that both of them told other
4 students at school about the creation of the
5 website?
6 A. Yes.
7 Q. And you were here when both of them
8 testified that students came up to them to talk
9 about the website, correct?
10 A. Yes.
11 Q. Now, in your opinion, as the
12 Administrator of this school for, approxmately,
13 five years, do you feel that the proactive action
14 that you took served to prevent more disruptions
15 than what you testified to in response to
16 Plaintiff's questioning?
17 MS. KOHART: Objection to form, but you
18 can answer.
19 A. Yes.
20 Q. Why so?
21 A. Repeat the question.
22 Q. Sure. Why do you believe that the
23 actions you took in suspending Jill and calling
24 MySpace and taking the account down and suspending

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1 her within a few days of the creation of the
2 website, why, in your professional opinion, did
3 that serve to limit future disruptions in the
4 school?
5 A. If they would have been able to get
6 away with it with me, they could have done it to
7 any teacher, any Administrator in the district
8 causing further disruption in the school day.
9 Q. And you were here when the kids were
10 talking about the buzz in the school about the
11 website?
12 A. Yes.
13 Q. How has this -- you briefly mentioned
14 about your health. How has this -- Counselor asked
15 you one quick question -- how has this affected
16 your health?
17 A. It's always in the back of my mind.
18 Sleep has been a problem ever since March 28th,
19 whenever the Court case was, and it's not going
20 away.
21 Q. How about when you first saw this
22 website, it must not have made you feel pretty
23 good?
24 A. No. I was more upset for my family

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1 than I was for myself. As a Principal, you don't
 2 make it until you get your name on the bathroom
 3 wall. I'm used to things like that. My family's
 4 not.
 5 MR. RIBA: That's all the questions I
 6 have.
 7 MS. KOHART: I have nothing further.
 8 (The deposition concluded at 1:49 p.m.)
 9 * * *
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ERRATA SHEET

Page	Line	Correction
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CERTIFICATE OF DEPONENT

1
 2
 3
 4 I, JAMES J. McGONIGLE, have read the
 5 foregoing transcript of my testimony taken on
 6 October 12, 2007, contained within pages 1 to 178,
 7 and it is true, correct and complete to the best of
 8 my knowledge, recollection and belief, except for
 9 the list of corrections, if any, attached on a
 10 separate sheet herewith.
 11
 12
 13
 14 DATE JAMES J. McGONIGLE
 15
 16
 17
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CERTIFICATION

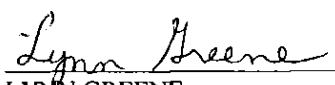
1
 2
 3 I HEREBY CERTIFY that I am a Court
 4 Reporter and Notary Public.
 5 I FURTHER CERTIFY that the witness was
 6 sworn to testify to the truth.
 7 I FURTHER CERTIFY that the foregoing
 8 is, to the best of my ability, a true and accurate
 9 transcript of the testimony taken stenographically
 10 by me at the time, place and date hereinbefore set
 11 forth.
 12 I FURTHER CERTIFY that I am neither a
 13 relative, employee, attorney nor counsel to any of
 14 the parties to the action, and that I am neither a
 15 relative nor employee of such attorney or counsel
 16 and that I am not financially interested in the
 17 action.
 18
 19 
 20 LYNN GREENE
 21
 22 (The foregoing certification of this transcript
 23 does not apply to any production of the same by any
 24 means, unless under the direction, control and/or
 supervision of the certifying reporter.)

EXHIBIT G

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JILL SNYDER, a minor, :
by and through her :
parents, TERRY SNYDER and :
STEVEN SYNDER, :
Individually and on :
behalf and their daughter, :
Plaintiffs:

V. :

BLUE MOUNTAIN SCHOOL : #07-CV-585
DISTRICT; DR. JOYCE E. :
ROMBERGER, Superintendent :
Blue Mountain School :
District; and JAMES S. :
MCGONIGLE, Principal Blue :
Mountain Middle School, :
both in their official and :
individual capacities, :
Defendants :

BEFORE: HONORABLE JAMES M. MUNLEY
UNITED STATES DISTRICT JUDGE

PLACE: SCRANTON, PENNSYLVANIA

PROCEEDINGS: TRO HEARING

DATE: THURSDAY, MARCH 29, 2007

APPEARANCES:

For the Plaintiffs: MARY CATHERINE ROPER, ESQ.
DEBORAH GORDON, ESQ.

For the Defendants: ELLIS H. KATZ, ESQ.
JONATHAN P. RIBA, ESQ.
THOMAS J. NICKELS, ESQ.

WITNESS INDEX

<u>FOR PLAINTIFFS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TERRY SNYDER	3	8	--	--
JILL SNYDER	11	14	22	--

FOR DEFENDANTS

JAMES McGONIGLE	23	31	36	--
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EXHIBIT INDEX

<u>FOR PLAINTIFFS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Exhibit No. 1	4	23
Exhibit No. 2	8	23
Exhibit No. 3	11	23
Exhibit No. 4	33	38

1 THE COURT: We have a Rule 5.2 which says that when
2 the name of a minor child is going to be used, only the
3 child's initials shall be used.

4 MS. ROPER: We have already corrected it. We will
5 leave the record reflect that instead of Jill Snyder, it will
6 be JS.

7 THE COURT: We better remind Sylvia that has to be
8 amended throughout.

9 MS. ROPER: Perhaps if I submitted a redacted
10 pleadings. I will do that.

11 THE COURT: Maybe you should do that today, because
12 sometimes the press picks up these things, and you wouldn't
13 want to be embarrassed.

14 MS. ROPER: They are all right with her name being
15 public, but I didn't realize. I will submit corrected
16 pleadings.

17 In accordance with the discussion we had in
18 chambers, we will begin with testimony.

19 Plaintiffs call Jill Snyder -- I'm sorry -- Terry
20 Snyder to the stand.

21 TERRY SNYDER, called as a witness, having been duly sworn or
22 affirmed according to law, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. ROPER:

25 Q. Ms. Snyder, will you state and spell your name for

1 the record?

2 A. Terry Lynn Snyder, T-E-R-R-Y. My last name is
3 spelled S-N-Y-D-E-R.

4 Q. Ms. Snyder, are you a Plaintiff in this action?

5 A. Yes, I am.

6 Q. And what is your relationship to the Plaintiff who
7 will be identified as JS on the pleadings?

8 A. I'm her mother.

9 MS. ROPER: Your Honor, may I hand the witness an
10 exhibit?

11 THE COURT: Sure.

12 MS. ROPER: Thank you.

13 BY MS. ROPER:

14 Q. Ms. Snyder, I have handed you what has been marked
15 as Plaintiff's Exhibit 1.

16 Do you recognize that document?

17 A. Yes. It is a letter I received certified mail from
18 the school after Jill was suspended.

19 Q. What is your understanding of the purpose of this
20 document?

21 A. It was my understanding this document was sent to
22 me to notify me of an informal hearing regarding Jill's
23 suspension.

24 Q. Would you look at the second page of the document,
25 the disciplinary notice?

1 A. Yes.

2 Q. I'm sorry. Let me go about this a different way.

3 You have mentioned your daughter's suspension.

4 When was it that you first learned of the incident
5 that resulted in your daughter's suspension?

6 A. On Thursday, the 22nd, I was at work and received a
7 phone call from Mr. McGonigle stating that I needed to come
8 in. My daughter posted something on the internet. It was
9 really quite serious. I needed to come in right way.

10 When I got to the school --

11 Q. Ms. Snyder, let me ask it this way: Did you, in
12 fact, go to meet with Mr. McGonigle?

13 A. Yes, I did.

14 Q. During that meeting with Mr. McGonigle, who else
15 was present?

16 A. Jill and Mrs. Guers.

17 Q. And what did Mr. McGonigle tell you in that
18 meeting?

19 A. He showed me the web page, and he told me that my
20 daughter was being suspended for breaking a Federal copyright
21 law, and that he was very upset about the things she said
22 about both him and, in particular, his family.

23 Q. Did he tell you what level of discipline infraction
24 this was?

25 A. Yes. He told me it was a Level 4.

1 Q. And what is your understanding of where a Level 4
2 falls in the hierarchy of the school district?

3 A. It is the worst level in the disciplinary code.
4 When he mentioned it, I didn't have the handbook in front of
5 me and didn't realize everything that it included.

6 Q. Did he tell you why she was being charged with such
7 a high level offense, why this offense was so bad?

8 A. Because she stole school property by taking the
9 picture from the school web site.

10 Q. Did he make any mention of the effect on classes,
11 on the school administration of this web site?

12 A. No.

13 Q. Do you know what time you left the meeting with
14 Mr. McGonigle?

15 A. I think it was about 10:30, around 10:30.

16 THE COURT: Is that in the morning?

17 THE WITNESS: Yes, a.m.

18 BY MS. ROPER:

19 Q. Do you know what time your meeting with
20 Mr. McGonigle began? You mentioned you got the call about
21 8:30?

22 A. Yes. I believe it was about 5 to 10, 9:55.

23 Q. Why so long between the call and the beginning of
24 the meeting?

25 A. I work in Harrisburg. It took me about an hour and

1 a half -- I mean, an hour and a quarter to get to the school.

2 Q. Referring again to Plaintiff's Exhibit 1, looking
3 on the second page, can you read what it says in the middle
4 of the page, the handwritten notation on the right?

5 A. Where it has the reason, other?

6 Q. Yes.

7 A. "Making false accusations about the school
8 principal and copyright laws."

9 Q. Are those the same reasons that Principal McGonigle
10 gave you for the suspension?

11 A. Mr. McGonigle told me that it was theft of school
12 property and posting the web site about him.

13 Q. Ms. Snyder, why did you bring this lawsuit?

14 MR. KATZ: Objection, Your Honor. I don't know if
15 the motivation of the lawsuit is relevant to the proceedings.

16 MS. ROPER: This is very brief.

17 THE COURT: Go ahead.

18 THE WITNESS: Because after I had time to collect
19 my thoughts about this, I felt that since it was not done in
20 school, I didn't feel that the school had the authority, but
21 that I had the authority to punish her for this. She's my
22 daughter.

23 BY MS. ROPER:

24 Q. Did you punish her for the posting?

25 A. She is being punished now, yes. She has been

1 grounded. She has had her phone privileges and her computer
2 privileges restricted.

3 Q. Did you require your daughter to do anything else
4 as a result of her actions?

5 A. Well, I asked her didn't she think it would be a
6 good idea to apologize -- to write a letter to apologize to
7 Mr. McGonigle?

8 Q. Did she do that?

9 A. Yes, she did.

10 Q. I'm going to hand you what has been marked as
11 Plaintiff's Exhibit 8 -- I'm sorry -- Plaintiff's Exhibit 2.

12 Ms. Snyder, can you tell me what this piece of
13 paper is?

14 A. This piece of paper is what Jill wrote to
15 Mr. McGonigle.

16 Q. Is this a copy of the letter she sent?

17 A. No. It's a copy of the text of the letter that she
18 sent.

19 MS. ROPER: Thank you. I have no further
20 questions.

21 THE COURT: Cross-examine

22 CROSS EXAMINATION

23 BY MR. KATZ:

24 Q. Ms. Snyder, I'm a little confused by Plaintiff's
25 Exhibit 2.

1 Can you explain to me again what this is?

2 A. I asked -- well, I don't have -- I have a scanner,
3 but I don't have my scanner hooked up currently at home. I
4 asked Jill just to write down again what she wrote in her
5 letter.

6 Q. So this is Jill's handwriting?

7 A. Yes.

8 Q. But it's a copy of a letter that was sent to
9 Mr. McGonigle?

10 A. Yes.

11 Q. Do you know when the letter was sent?

12 A. My son took it to school on Monday --

13 THE COURT: Are you looking at Exhibit 2?

14 MR. KATZ: Yes.

15 THE WITNESS: -- the 26th.

16 BY MR. KATZ:

17 Q. The 20 --

18 A. -- 6th.

19 Q. And your meeting with Mr. McGonigle occurred on the
20 22nd?

21 A. Yes.

22 Q. Have you seen the web site?

23 A. I saw a printout of it, yes.

24 Q. Did you have anything to do with that web site?

25 A. No.

1 Q. Do you have any thoughts about the web site?

2 A. It was terrible. What was done was clearly wrong.

3 Q. Do you have any information at all that supports
4 any of these statements made by your daughter on that web
5 site?

6 A. No.

7 Q. For example, your daughter asserts that one of
8 Mr. McGonigle's interests is -- and I won't use the exact
9 word from the web site -- but engaging in sexual intercourse
10 in his office.

11 Do you have any information to support that
12 allegation?

13 A. No.

14 Q. It also asserts that one of his interests is
15 hitting on students.

16 Do you have any information to support that
17 allegation?

18 A. No, but I didn't make that allegation.

19 Q. Who did? Your daughter, correct?

20 A. Either her or her friend, yes.

21 Q. So you have no information at all that supports any
22 of the claims or the allegations that are on this web site,
23 do you?

24 A. No.

25 Q. Do you know where the photograph came from that was

1 on the web site?

2 A. I was told that it came from the school's web site.

3 Q. Who told you that?

4 A. Mr. McGonigle.

5 Q. Would you agree then the statement that is in
6 Plaintiff's Exhibit 1, that your daughter made false
7 accusations against Mr. McGonigle, is, in fact, a true
8 statement?

9 A. Yes.

10 MR. KATZ: No other questions, Your Honor.

11 THE COURT: Thank you very much. You can step
12 down.

13 MS. GORDON: Your Honor, we call Jill to the stand.

14 JILL SNYDER, called as a witness, having been duly sworn or
15 affirmed according to law, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. GORDON:

18 Q. State your name for the record.

19 A. Jill.

20 Q. I'm showing you what has been marked Plaintiff's
21 Exhibit 3. Do you recognize it?

22 A. Yes.

23 Q. What is it?

24 A. It's My Space copy of what me and my friend did.

25 MR. KATZ: Your Honor, I can't hear.

1 THE COURT: Can you keep your voice up? I'm sorry.
2 Our system is down for some reason, and if you could just
3 speak up louder.

4 THE WITNESS: It is a copy of what me and my friend
5 did on My Space.

6 BY MS. GORDON:

7 Q. Why did you make it?

8 A. Because I was mad.

9 MR. KATZ: I didn't hear that.

10 THE WITNESS: Because I was mad.

11 BY MS. GORDON:

12 Q. Why were you mad?

13 A. Because of the dress code.

14 Q. Can you explain?

15 A. Mr. McGonigle, I thought he handled the situation
16 inappropriately --

17 Q. A previous incident?

18 A. Yes -- by yelling at me, and he didn't have to do
19 that.

20 Q. Did you mean the statements that you wrote, you and
21 your friend wrote? Did you mean them?

22 A. No.

23 Q. What did -- why did you write it then? What was
24 the purpose in writing it?

25 A. It was a joke between me and my friends.

1 Q. Did you take a hard copy of the printout of the web
2 site to school?

3 A. No.

4 Q. Do you know if any student took a hard copy to
5 school?

6 A. Not that I know of.

7 Q. Did you access the web site, the My Space from
8 school?

9 A. No, because they block My Space at school so nobody
10 could access it.

11 Q. Say that again.

12 A. None of the students could access it.

13 Q. When you went to school, did you talk about the web
14 site with your friends?

15 A. If I was asked about it out of class.

16 Q. So did you talk about it ever during class?

17 A. No.

18 Q. Did any of your teachers say anything about it to
19 you?

20 A. No.

21 Q. Did you hear of any teachers telling other kids to
22 stop about it?

23 A. Not that I witnessed or heard about.

24 Q. How do you feel about this whole incident, Jill?

25 MR. KATZ: I'm sorry. I didn't hear the question.

1 BY MS. GORDON:

2 Q. How do you feel about this whole incident, Jill?

3 A. It started out as a joke, and then I found it
4 stupid, and I think it was a mistake for me to make. I
5 shouldn't have made it.

6 MS. GORDON: That's all I have, Your Honor.

7 THE COURT: Cross-examine.

8 CROSS EXAMINATION

9 BY MR. KATZ:

10 Q. Jill, do you have a copy of the web site in front
11 of you?

12 It doesn't say anywhere on there that it is a joke,
13 does it?

14 A. No.

15 Q. How did you get the picture, Jill?

16 A. My friend got it off the school web site.

17 Q. And was this web site available to anybody who
18 wanted to access it?

19 A. We set it on private.

20 Q. Pardon?

21 A. We set it on private.

22 Q. From the very beginning was it set on private?

23 A. No.

24 Q. Let me ask the question this way: What happens
25 when it is set on private?

1 A. You can only see the section on where his picture
2 is.

3 THE COURT: What can you do? I don't understand
4 it. Can you explain that to me?

5 THE WITNESS: When it is set on private, the
6 section of where the picture is and, like, the information of
7 how old he is and where he is from, that is the only part you
8 could see.

9 BY MR. KATZ:

10 Q. How do you access the rest of what is on it?

11 A. You have to request to be his friend.

12 Q. To be whose friend?

13 A. Mr. McGonigle.

14 Q. So individuals would have to contact Mr. McGonigle
15 to have access to the rest of what is on this web site after
16 it was identified as private, is that accurate?

17 A. Yes.

18 Q. How long was it before it was private?

19 A. Not even a whole day.

20 Q. And during the time before it was private, isn't it
21 true that anybody could access it?

22 A. Yes.

23 Q. And when they did access it, isn't it true they
24 could see everything that is identified in Plaintiff's
25 Exhibit 3?

1 A. Yes.

2 Q. Including all the written details, correct?

3 A. Yes.

4 Q. Let's talk about the details a little bit.

5 Where did you get the information that you
6 identified under the section that is identified as general
7 interests?

8 A. What do you mean?

9 Q. Where did you get that information?

10 A. Like what part of it?

11 Q. Pardon me?

12 A. What part of the general interests?

13 Q. Any of it. Each one.

14 A. Well, I have heard other students talk about
15 Mr. McGonigle and whatever he does and I just wrote it down.

16 Q. So is it your testimony that other students
17 reference the fact that there was sexual relations occurring
18 in Mr. McGonigle's office?

19 A. Yes.

20 Q. And is it your testimony that other students told
21 you that he had been hitting on students and their parents?

22 A. Yes.

23 Q. Did you take any steps to determine whether those
24 allegations were true before you put it on the web site?

25 A. Well, I told the friends who complained about it

1 that I'm pretty sure that's not what happened, but --

2 Q. But you put it on the web site anyway?

3 A. Yes.

4 Q. Did you check with anybody at all?

5 For example, did you talk to Mr. McGonigle to
6 discuss whether these allegations were true?

7 A. No.

8 Q. Did you talk to any administrator in the school
9 district about whether these allegations were true?

10 A. No.

11 Q. Did you confer with anybody, other than the other
12 students, about whether those allegations were true?

13 A. No.

14 Q. Do you believe those allegations to be true
15 yourself?

16 A. No.

17 Q. But you put them on the web site anyway?

18 A. Yes.

19 Q. And with regard to any of the information that is
20 written on this web site, did you take any steps to establish
21 the truth of any of those statements before you placed them
22 on the web site?

23 A. Repeat the question, please.

24 Q. Sure.

25 With regard to any of the statements that are on

1 the web site, did you take any steps to establish whether or
2 not those statements before you placed them on the web site
3 were true?

4 A. No.

5 Q. On the bottom of the web site, the bottom
6 right-hand corner, there is a picture of an individual with
7 the name of Tom, do you see that?

8 A. Um-hum.

9 Q. Can you tell me what that is?

10 A. That's the owner of My Space.

11 THE COURT: That is the owner of what?

12 THE WITNESS: My Space.

13 BY MR. KATZ:

14 Q. What about the other names that are there right
15 next to Tom's picture?

16 A. They were friends on My Space.

17 Q. I'm sorry?

18 A. They were friends on the My Space.

19 Q. Friends of who?

20 A. The profile.

21 Q. Pardon me?

22 A. The profile.

23 Q. I'm sorry. I didn't hear your response.

24 A. The profile.

25 Q. What do you mean the profile?

1 A. Everybody -- whoever has a My Space, they are
2 called friends.

3 Q. Are these individuals who access this web site?

4 A. Yes.

5 Q. There is also a reference to somebody, I guess,
6 having 22 friends. What does that mean?

7 A. That means in total 22 people had access to the web
8 site.

9 Q. Now, was that before or after it was established to
10 be private?

11 A. Like, he had a couple of friends before it was
12 private.

13 Q. I'm sorry. I didn't mean to interrupt you.

14 Can you repeat your answer?

15 A. It had a couple of friends before it was private.

16 Q. Why did you make it private?

17 A. Because I wasn't comfortable with how everybody was
18 responding to it.

19 Q. Who is everybody?

20 A. The people who were talking about it.

21 Q. And where was this conversation occurring?

22 A. School and outside of school.

23 Q. In school and outside of school?

24 A. Yes.

25 Q. The people that were talking to you about it, were

1 they students in your school building?

2 A. Yes.

3 Q. And the people who were talking to you about it
4 outside of school, were they students in your school building
5 as well?

6 A. Yes.

7 Q. Do you remember what these individuals were saying
8 to you about it?

9 A. They asked me about, like, some of the things in
10 there, and they said it was funny, so

11 Q. Do you remember anything else that any of the other
12 students who you talked to about it said?

13 A. No.

14 Q. What is your opinion about whether you think this
15 web site would affect Mr. McGonigle's ability to do his job
16 as principal?

17 A. I don't understand the question.

18 MS. GORDON: Objection, Your Honor. It's
19 speculation.

20 THE COURT: Sustained.

21 BY MR. KATZ:

22 Q. Over what period of time did these conversations
23 occur between you and other students?

24 A. In the hallways.

25 Q. In the hallways.

1 Was it outside of class?

2 A. It was, like, walking to classes and such.

3 Q. Did you have any conversation with any students
4 while you were in any of your classes?

5 A. No.

6 Q. How many days transpired between the first
7 conversation that you had with a student about this web site
8 and the last conversation that you had with a student about
9 the web site?

10 A. I don't know.

11 Q. Was it more than one day?

12 A. Yes.

13 Q. Was it more than two days?

14 A. I'm not sure.

15 Q. Would you agree with me that this web site is
16 written as if it was prepared by Mr. McGonigle?

17 A. Yes.

18 Q. And is there a particular reason why you prepared
19 the web site that way?

20 A. No.

21 Q. Why did you do it?

22 A. I don't know.

23 Q. Have you no idea why you wrote this as if he had
24 written it?

25 A. No.

1 MR. KATZ: No other questions.

2 MS. GORDON: Judge, just a few on redirect.

3 REDIRECT EXAMINATION

4 BY MS. GORDON:

5 Q. Is Mr. McGonigle's name anywhere on the web site?

6 A. No.

7 Q. If somebody wanted to find that web site, do they
8 have to know the URL, the www?

9 A. No.

10 Q. So how would they find it?

11 A. If somebody is already their friend, they could
12 be -- they could find this My Space under their friend
13 account.

14 Q. But it says 22 friends. So does that mean just 22
15 people saw it?

16 A. Not that I -- I'm pretty sure.

17 Q. Do you think anyone took it seriously, to your
18 knowledge?

19 MR. KATZ: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MS. GORDON:

22 Q. Did anyone tell you that they took it seriously?

23 A. No.

24 MS. GORDON: Nothing further.

25 MS. ROPER: Your Honor, we will just move in

1 Plaintiff's Exhibits 1, 2 and 3.

2 THE COURT: No objection, they are admitted

3 MR. KATZ: No objection.

4 (At this time, Plaintiff's Exhibit Nos. 1, 2 and 3
5 were received into evidence.)

6 MR. KATZ: We call James McGonigle.

7 JAMES MCGONIGLE, called as a witness, having been duly
8 sworn or affirmed according to law, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KATZ:

11 Q. Jim, will you state your full name?

12 A. James Stephen McGonigle.

13 Q. Spell your last name.

14 A. M-C-G-O-N-I-G-L-E.

15 Q. What position do you hold in the Blue Mountain
16 School District?

17 A. I'm the principal of Blue Mountain Middle School.

18 Q. Can you very briefly describe your responsibility
19 as middle school principal?

20 A. Middle school principal, I'm acting now as the
21 assistant principal and principal due to the fact that the
22 assistant principal has taken another job within the school
23 district.

24 So I'm responsible for all discipline, day-to-day
25 operation of the school, attendance, everything that comes

1 with the job.

2 Q. And how long have you been acting in the dual
3 capacity?

4 A. Since March 1st.

5 Q. So at the time this incident arose, you were in the
6 capacity of doing responsibilities for both the assistant and
7 the principal?

8 A. That's correct.

9 Q. Including all disciplinary aspects?

10 A. That's correct.

11 Q. Can you describe for the Court how you found out
12 about this web site?

13 A. It was last Tuesday. The date I'm not quite sure
14 of. Tuesday afternoon around dismissal time, I was in the
15 office area talking with some students. We got a new fish
16 tank in the office and things like that.

17 A boy said, hey, Mr. McGonigle, do you know there
18 is a web site out about you? I said, oh, yeah, and I walked
19 to my office not thinking anything of it.

20 The next morning, three young ladies came into my
21 office with a bus complaint, an issue with their bus driver,
22 and before they left, one of the young ladies said to me,
23 Mr. McGonigle, there is something else I need to tell you.

24 I asked her what it was, and she said there is a
25 My Space web site about you and your family out there. I

1 said, oh, really?

2 I said, well, there is not too much I really can do
3 about that, because, I mean, My Space is a free account. All
4 you have to do is get an e-mail account and you're out there.

5 I said, but can you do me a favor and try to find
6 out who did it for me?

7 So by the end of the school day, I had two names of
8 the girls who did it. That was Wednesday. The two names --
9 I won't mention the other girl. Jill Snyder was one of the
10 names. I didn't get to question Jill that day, on Wednesday,
11 because she was not in school on Wednesday.

12 Thursday morning first thing in the morning, I
13 called Jill down to my office with Mrs. Guers.

14 Q. Who is Mrs. Guers?

15 A. Mrs. Guers is one of my two guidance counselors in
16 the middle school. Anytime there is a big discipline issue,
17 I always have another party with me.

18 I asked Jill -- Jill sat down, and I said, do you
19 have any idea why you are here? She said, I didn't do the My
20 Space account. I said to her, you didn't? Well, I have a
21 phone number here of Stephanie from My Space. I said, do
22 want us to give Stephanie a call and find out if it came from
23 your computer? She said, that won't be necessary. I said,
24 so you're telling me you did it? She said, yes.

25 Q. Had you seen the actual web site at that point?

1 A. Just my picture.

2 Q. At some point, did you see the entire web site?

3 A. Yes.

4 Q. When was that?

5 A. That was Thursday morning.

6 Q. And how did that happen?

7 A. A copy came into school to me.

8 Q. Do you know where it came from?

9 A. Yes.

10 Q. Where?

11 A. Another student.

12 Q. Were you able to determine where the picture that
13 is on the web site of you came from?

14 A. Yes. It's the current picture of me on the Blue
15 Mountain School District web site.

16 Q. What, if anything, occurred subsequent to your
17 meeting with Jill?

18 A. Regarding?

19 Q. Regarding this web site and regarding the
20 discipline that you imposed.

21 A. With my meeting with Jill some of things that
22 occurred during that day, one of the disruptions that
23 occurred is Mrs. Guers, one of our two guidance counselors,
24 was administering the PSSA, the state assessment test to
25 students, which I had to pull her from, subsequently had to

1 pull the other guidance counselor from a duty she was doing
2 to administer the test.

3 During the course of the day, three teachers had
4 contacted me, are you aware that there is a web site out
5 there about you, the students are talking about it?

6 One teacher, in fact, went as far as to say that
7 the last 5 to 7 minutes of his eighth period class was
8 disrupted because the students, that is all they were talking
9 about, were pestering the teacher, you know, are you aware of
10 this? Does Mr. McGonigle know? They weren't able to be on
11 task for the last 5 to approximately 7 minutes.

12 Q. Now, did you eventually hold a meeting with
13 Mrs. Snyder?

14 A. Yes.

15 Q. And can you relate what you told her about -- well,
16 first of all, did you advise her that her daughter was going
17 to be disciplined?

18 A. Not on the phone. When she was sitting with me
19 face to face, yes.

20 Q. What did you tell her with regard to the reasons
21 why the discipline was going to occur?

22 A. Two reasons. One, it's a Level 4 discipline
23 infraction in the Blue Mountain parents/students handbook,
24 making false accusations against a school member or a
25 student.

1 In addition, the copyright laws of being our web
2 site, taking my picture off the school district web site.

3 Q. What is your understanding about that last piece
4 concerning your belief that there is a copyright violation?

5 A. Life Touch is our photographer, and we have a
6 service agreement with them that we are authorized to use
7 their pictures and only we are authorized to use their
8 pictures for administrative purposes.

9 Q. And to the best of your knowledge, was there any
10 permission granted to take your picture and move it to a web
11 site?

12 A. No.

13 Q. You heard the questions that I asked Jill with
14 regard to some specific allegations that were made in this
15 web site, yes?

16 A. Yes.

17 Q. Is there any truth to any of those allegations?

18 A. Absolutely not.

19 Q. Do you have an opinion with regard to how this web
20 site would affect your ability to administer your school
21 building?

22 A. Absolutely. If a student or a parent went out on
23 that web site when it was public, or even if it was private,
24 and viewed that as being true, how would they approach me as
25 a serious leader of a school?

1 Q. How many students in the building?

2 A. 720 approximately.

3 Q. How many administrators in the building?

4 A. One.

5 Q. You?

6 A. Me.

7 Q. There was some testimony from Mrs. Snyder about
8 this being a Level 4 offense.

9 Do you recall that testimony?

10 A. Yes.

11 Q. Can you describe for me where that it's a Level 4
12 offense comes from?

13 A. We have four levels of discipline in the middle
14 school; Level 1, 2, 3 and 4, 4 being the most severe.

15 Q. And is there somewhere where the particular
16 offenses are identified as a Level 1 through 4?

17 A. Yes.

18 Q. Where is that?

19 A. That is in the parents/students handbook.

20 Q. And do you know whether Jill had a copy of the
21 student handbook?

22 A. Yes. I know she had a copy of the handbook.

23 Q. How do you know she had a copy?

24 A. She had signed a form in the beginning of the year
25 verifying that she not only received a copy, but read and

1 understood all the rules in it.

2 Q. To the best of your knowledge, do you know whether
3 this web site is still up?

4 A. No, it is not.

5 Q. And how do you know that?

6 A. I contacted My Space after getting the URL number
7 and they have taken it off.

8 Q. So you had to do that yourself in order to get it
9 removed?

10 A. Yes, I had to do it myself.

11 Q. And when was that?

12 A. That would have been Thursday, approximately 10:00.

13 Q. Thursday, March 22nd?

14 A. A little before 10. It was right before my meeting
15 with --

16 THE COURT: So how long was it on?

17 THE WITNESS: That, I'm not aware of.

18 BY MR. KATZ:

19 Q. So you don't know when it first went on?

20 A. No.

21 Q. You just know when it came down?

22 A. I just know when it came down.

23 MR. KATZ: Nothing further, Your Honor.

24 THE COURT: Cross-examine.

25 MS. ROPER: Yes, Your Honor.

1 Thank you.

2 CROSS EXAMINATION

3 BY MS. ROPER:

4 Q. Mr. McGonigle, were there any fights in school as a
5 result of the posting of this web site?

6 A. No.

7 Q. Did any of your teachers have to take a medical
8 leave as a result of the posting of this web site?

9 A. Not that I'm aware of.

10 Q. And it is your job to take care of disciplinary
11 matters regardless of whether it's a web site about you or
12 some other disciplinary matter, correct?

13 A. Yes.

14 Q. And the guidance counselors are -- I'm sorry.
15 You stated that your policy is to always have
16 someone else in the room when it is a serious disciplinary
17 matter?

18 A. Yes.

19 Q. And if there is no other administrator in the
20 building, is that usually a guidance counselor?

21 A. Yes.

22 Q. How long was the meeting with Jill that Mrs. Guers
23 attended?

24 A. Jill alone or Jill with the other student?

25 Q. The combination.

1 A. The total meeting, I would say approximately 20
2 minutes.

3 Q. And was Mrs. Guers also present for the meeting
4 with Ms. Snyder?

5 A. Yes.

6 Q. How long was that meeting?

7 A. It started about 9:55, and my documentation has the
8 meeting ending at 10:20.

9 Q. The teacher who reported their 5 to 7-minute
10 disruption in his or her classroom because of this, what day
11 did that occur on?

12 A. That occurred on Thursday.

13 Q. And did you tell the teachers in the school about
14 the suspension?

15 A. Yes, but not the reason. Teachers are always made
16 aware of who is suspended and who is not in order for work
17 purposes.

18 Q. Are you aware of any teachers discussing that
19 suspension with their students?

20 A. They know better not to.

21 Q. Am I correct that your testimony is that Life Touch
22 owns the photograph that was posted on the web site, but the
23 school district has a license to use it?

24 A. That is my understanding, yes.

25 Q. I'm sorry. Who did you say replaced Counselor

1 Guers in the testing on the day that she attended the meeting
2 with you?

3 A. Mrs. Frain.

4 Q. And what is her role?

5 A. She is the other guidance counselor.

6 Q. So that means she was missing from the guidance
7 office for some period of time in the morning?

8 A. Yes.

9 Q. Isn't it true that Mrs. Frain also came to your
10 office at some point during the meeting with Jill and her
11 mother?

12 A. Yes.

13 Q. At your request?

14 A. Yes.

15 Q. While Mrs. Guers was there, too?

16 A. Yes.

17 Q. Who was then in the test?

18 A. Testing was over at that point.

19 Q. Is it correct that it is not possible for students
20 to access the My Space web site from school?

21 A. That is correct.

22 Q. Mr. McGonigle, I have handed you something marked
23 as Plaintiff's Exhibit 4, and I will represent to you and ask
24 you if you believe it to be a correct representation that
25 this is the cover and certain pages from the Blue Mountain

1 Middle School Handbook?

2 A. Yes, it is.

3 Q. And if you turn to --

4 A. 55?

5 Q. Actually, I would like to start on 50.

6 Is this where we can find the breakdown of
7 infractions between Level 1, Level 2, Level 3 and Level 4?

8 A. Yes, ma'am.

9 Q. This essentially describes the disciplinary code of
10 the school district?

11 A. Correct.

12 Q. And isn't it true that there are infractions listed
13 in here that specifically relate to the disruption of school
14 and school times, such as under Level 1 discipline on Page
15 50, the fourth bullet point, classroom disruption?

16 A. Um-hum.

17 Q. There are other infractions here at various levels
18 that relate to classroom disruption, correct?

19 A. Correct.

20 Q. Jill was not charged with any of those infractions,
21 correct?

22 A. On Level 1?

23 Q. Jill was not charged with any infraction related to
24 classroom disruption, correct?

25 A. That is correct.

1 Q. Mr. McGonigle, I believe in front of you there
2 should still be a copy of Plaintiff's Exhibit 1.

3 A. There is not.

4 Q. I'm sorry. I will hand you a copy.

5 Did you prepare this letter?

6 A. Yes, I did.

7 Q. And when did you prepare it?

8 A. It would be March 23rd.

9 Q. And is that also -- attached to it, there is a
10 disciplinary notice that is dated March 22nd?

11 A. Correct.

12 Q. Did you prepare that?

13 A. Yes.

14 Q. What time of day?

15 A. It would have been near the end of the day.

16 Q. So am I correct that you prepared this after you
17 had received reports from teachers about students talking
18 about the web site?

19 A. Approximately around the same time, yes.

20 Q. And certainly you prepared the letter dated Friday,
21 March 23rd, after you had heard reports from teachers about
22 students talking about it?

23 A. No. The letter was typed on March 23rd, but it was
24 actually written on the 22nd.

25 Q. Did you read it over before you signed it?

1 A. Yes.

2 Q. And neither one of these documents makes any
3 mention of any classroom disruption, correct?

4 A. That's correct.

5 MS. ROPER: I have no further questions. Thank
6 you.

7 MR. KATZ: Just a few, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. KATZ:

10 Q. Jim, how many days was Jill suspended for?

11 A. Ten.

12 Q. Is that the maximum penalty that is available under
13 your code of conduct?

14 A. Yes.

15 Q. There is nothing more than a 10-day suspension that
16 could happen?

17 A. Yes. I could recommend an expulsion

18 Q. You didn't do that?

19 A. I did not do that.

20 Q. Now, do you have any intention of doing that?

21 A. No. I made that clear yesterday at my meeting with
22 Mrs. Snyder and Jill.

23 Q. You made what?

24 A. I made that point clear yesterday that I do not
25 intend to take this to an expulsion hearing. I recommended

1 to the superintendent that we don't go to an expulsion
2 hearing.

3 Q. Now, during this 10-day period, is she in school or
4 out of school?

5 A. She is out of school.

6 Q. What is happening with regard to her assignments?

7 A. All her schoolwork has been gotten for her from her
8 teachers. It has been sent to the office. It has been sent
9 home to her through her younger brother who is also in the
10 middle school.

11 Q. Do you have any intention if she's missed anything
12 in preventing her from making that work up?

13 A. Absolutely not.

14 Q. Is it your belief that all of the assignments that
15 have occurred to date have been provided to her?

16 A. Yes.

17 MR. KATZ: No other questions.

18 THE COURT: And her disciplinary consisted of a
19 10-day suspension period?

20 THE WITNESS: End of the story, yes.

21 THE COURT: Thank you.

22 THE WITNESS: In addition, no school dances as
23 well. That's also part of the discipline.

24 THE COURT: Pardon me?

25 THE WITNESS: No school dances for the rest of the

1 year as well. That is also part of the discipline.

2 MR. KATZ: Nothing further, Your Honor.

3 MS. ROPER: We will move into admission Plaintiff's
4 Exhibit 4, and that is it.

5 THE COURT: No objection, it is admitted.

6 Do you have any?

7 MR. KATZ: No.

8 (At this time, Plaintiff's Exhibit No. 4 was
9 received into evidence.)

10 THE COURT: Do you want to make a statement?

11 MS. ROPER: I would.

12 Your Honor is obviously familiar with the law in
13 this area and with the cases cited in our brief, and I will
14 tell you, frankly, I consider the Killion case kind of a
15 cheat sheet. You can read through it and it progresses
16 through the analysis.

17 We start with Tinker, of course, where the Supreme
18 Court says students don't lose their Constitutional Rights
19 when they walk through the door.

20 Obviously, the school officials have an interest in
21 maintaining order and an educational atmosphere in the
22 school, and therefore, the balancing of the student's First
23 Amendment Right under Tinker is that you can punish a student
24 for speech only when it causes a substantial and material
25 disruption in the school.

1 There have been a number of cases in Pennsylvania
2 District Court dealing with school attempts to punish
3 students for out-of-school speech, in particular speech on
4 the internet. Killion, Flaherty, Latour, and Layshock most
5 recently. We're fairly familiar with those. You will see
6 Mr. Walczak's name on each of those opinions.

7 The deciding factor always -- each of those Courts
8 have stated very, very clearly in general the school has no
9 authority to punish students for out-of-school conduct.

10 That is also, of course, our Fourteenth Amendment
11 argument and our argument under the school law, which is
12 absolutely clear in Hoke and in the other cases cited in our
13 brief.

14 The school has no authority over the conduct of
15 students when those students are not under the school
16 supervision, unless their conduct causes a substantial and
17 material disruption in the school.

18 Now, in fact, there is some question in the law as
19 to whether that is the proper standard to apply in these
20 cases. There is higher standards that may apply, because
21 when you're talking about out-of-school conduct, it is not an
22 instant assumption that you're talking about something the
23 school has any right to regulate at all.

24 In the case of Sacks versus State College Area
25 School District -- this is 240 F.3d 200, a Third Circuit

1 decision from 2003. It's an opinion by then Judge Alito --
2 in Footnote 11 of that case, he notes that we're talking
3 about speech in school, and he says that there is at least a
4 good question that when you're talking about speech out of
5 school, you don't get the Tinker standard, which is more
6 deferential to the interest of the school district, but, in
7 fact, a traditional First Amendment analysis which requires
8 strict scrutiny in order to justify any government
9 infringement of the student's right to speak.

10 We don't need to go into that analysis. The Tinker
11 analysis is more deferential to the school, and they can't
12 meet it here.

13 In these cases, in Killion, Flaherty, Latour and
14 Layshock, the Courts lay out what is required, what
15 constitutes a substantial and material disruption of the
16 school in order to justify regulation or punishment of
17 students' speech that has been accomplished off campus, on
18 the internet.

19 What distinguishes this case from any of the other
20 cases, frankly, except Latour. Latour is the only other case
21 in which the student did not bring the material to school at
22 all, at all.

23 Jill did not bring this material to school. She
24 didn't encourage her friends to bring it to school. In fact,
25 we have no information that it was brought to school until it

1 was requested by Mr. McGonigle from students who were
2 reporting the existence of the web site to him.

3 So this is not at all like the Layshock case in
4 which Justin Layshock created similarly a profile of his
5 principal on My Space, an insulting profile, but in that
6 case, Justin and all his friends were running to the school
7 computers and accessing the thing from the school. Students
8 were disrupting classes to use the computers to get to it.
9 Ultimately, they shut the computers down was the testimony at
10 the preliminary injunction hearing which caused a disruption
11 of a number of classes that depended on the use -- a complete
12 disruption, cancellation of classes for several days, six
13 days, I believe, because those classes depended on the use of
14 the computers in order to try to block access to the material
15 that was on My Space.

16 There is one other case. I'm sorry. It is not
17 cited in my brief because of an oversight. I apologize.
18 There is another case in which a student -- in which
19 discipline against a student for a internet posting was
20 upheld, and that is JS versus Bethlehem. It is a
21 Pennsylvania Supreme Court case, and the citation to that is
22 807 A.2d 847, Pennsylvania Supreme Court 2002.

23 In this case, again, a student created a web site
24 about certain teachers, and I think mostly teachers, perhaps
25 members of the administration at his school. That web site

1 was far worse, shall we say. It was quite threatening and
2 violent. The Court found that there were no true threats on
3 the web site, but it was kind of a close analysis on that
4 point.

5 So the real question then in JS still came down to
6 the question, was there substantial material disruption of
7 the school?

8 The Court found that there was because one of the
9 subjects of the web site, or one teacher was so upset by what
10 she saw there, including, frankly, solicitation of money to
11 hire a hit man to kill her and depictions of her with her
12 head severed from her body, she found those things so
13 upsetting that she ended up taking a medical leave for the
14 last three months of school, which required the use of a
15 number of substitute teachers and certainly, completely
16 interfered with her class. In addition, of course, there
17 were other types of disruption of school.

18 These are the kinds of things that constitute
19 substantial and material disruption, not students talking for
20 7 minutes at the end of a class, not the requirement of the
21 man who is in charge of discipline of the school to spend 40
22 minutes talking to a student and her parent, not the need of
23 a guidance counselor to substitute for another guidance
24 counselor. There is no allegation there was a crisis in the
25 guidance office as a result of this.

1 This was, in fact, a routine disciplinary matter
2 for this school, and there was no disruption of the classroom
3 time that we have heard about, and that, Your Honor, bars any
4 action against Jill for her off-campus conduct under either
5 the First Amendment, the Fourteenth Amendment, the state law,
6 each of our claims.

7 The only thing I would add, Your Honor, is that
8 when you're talking about First Amendment Rights, of course,
9 irreparable harm is generally assumed because of the risk of
10 chilling free expression.

11 We also are talking about fundamental parental
12 rights to direct the upbringing of their children. So there
13 is irreparable harm here, and certainly none facing the
14 school if Jill were to be put back in classes pending the
15 outcome of this litigation. She is not dangerous, et cetera.
16 Thank you.

17 THE COURT: Thank you very much.

18 Mr. Katz.

19 MR. KATZ: Thank you, Your Honor.

20 Your Honor, the test for this proceeding whether a
21 temporary restraining order or a preliminary injunction, both
22 which have been sought, are clearly articulated, likelihood
23 success on the merits, irreparable harm, greater harm to the
24 school district, public interest favoring the relief or not.

25 I would like to address the factors with regard to

1 likelihood of success. Counsel referenced the decision of JS
2 versus Bethlehem Area School District, and in that instance,
3 the Court went out to point out certain situations where
4 speech is regulated in one way, shape or form.

5 One of those ways is with regard to certain types
6 of defamatory speech, and the Pennsylvania Supreme Court
7 cited the New York Times versus Sullivan.

8 What we have here initially, we would argue, is
9 speech that is not protected. If Your Honor recalls the
10 testimony, we have a couple things going here.

11 Number one, this web site is not the typical web
12 site where comments are being made about an individual. When
13 Your Honor reviews this web site, it is written as if it was
14 written by the principal himself about himself, which we
15 believe is a difference of significance with regard to the
16 way this web site was posted, number one.

17 Number two, the testimony was they have no evidence
18 to support some very serious allegations made with regard to
19 an educational administrator. No information to support it.
20 No effort made to find out whether they were true or false.
21 In fact, Jill, if I recall correctly, she doesn't believe
22 this information to be true.

23 We believe that this is, in fact, defamatory
24 information published with malice and, therefore, does not
25 constitute protected speech in any way, shape or form.

1 The allegations directed against this principal in
2 part are very, very serious, and I will get in a minute to
3 the consequences that could flow to this individual from the
4 allegations that are set forth in this web site.

5 So we would submit to you that it is not protected
6 speech at all and, therefore, there is no likelihood of
7 success on the merits.

8 If Your Honor concludes that it is protected
9 speech, then we get to what is the appropriate standard.
10 Again, in the JS case, JS versus Bethlehem Area School
11 District, the Pennsylvania Supreme Court actually concluded
12 that that web site in that instance straddled the fence, and
13 I think those were the exact words that the Court used in the
14 opinion, straddled the fence in between the Tinker standard,
15 which requires the disruption, and the Frasier standard,
16 which simply requires that the information be lewd or plainly
17 offensive.

18 The Court then said at Page 68, "Thus, we will
19 first apply Frasier and then Tinker." So the Court never
20 really decided in that instance which is the appropriate
21 standard. We would submit to Your Honor that there is a
22 question about what is the appropriate standard.

23 The Pennsylvania Supreme Court in Short Drift
24 concluded that the allegations made in that web site
25 certainly were of the nature under the Frasier standard.

1 They would be considered lewd and plainly offensive.

2 We would submit to Your Honor if you use that
3 standard, we think it easily meets the standard that this
4 information is lewd and offensive as well.

5 We then get to the Tinker standard. We believe
6 that the testimony that has been presented here this morning
7 does provide a sufficient basis for you to conclude that
8 there was disruption to the environment in the school
9 building.

10 The other point, however, about the disruption
11 component is the following: What the test is, as noted in
12 Layshock, the test is that the speech may be regulated if it
13 would substantially disrupt school operations or interfere
14 with the rights of others, and that is where I would like to
15 spend a couple of minutes talking to you about the
16 allegations that have been made and the impact it would have
17 on the principal.

18 The allegations that I focused on during my
19 questioning of Jill had to do with the claim that he was --
20 and I'm not going to use the words that are in the web site.
21 You can see it for yourself. -- that he was engaging in
22 sexual intercourse in his office, that he was, quote, hitting
23 on students and their parents, end of quote.

24 On the other piece of the web site under the hello
25 children segment of it, the following statement is made,

1 quote, for those who want to be my friend and aren't in my
2 school, I love children, sex (any kind), and then it
3 continues further.

4 Those allegations for a school district employee
5 raise serious consequences as follows: Under the Child
6 Protective Services Act, which is 23 Pennsylvania Purdon's
7 Statute 6352(a), any school employee who has reasonable cause
8 to suspect on the basis of training or experience that a
9 student is a victim of serious bodily injury or sexual abuse
10 shall report to law enforcement and the district attorney.
11 If, in fact, it is an administrator who they believe is
12 engaged in that misconduct, there is, again, obligation to
13 immediately report that misconduct, if there is a reasonable
14 belief that that misconduct is occurring.

15 So if you have allegations that we would submit to
16 you could have easily risen to the level where somebody would
17 have had the responsibility to report the allegations made,
18 number one.

19 Number two, there are a series of crimes that if
20 committed by a school district employee result in immediate
21 termination, Section 1-111 of the Pennsylvania School Code,
22 24 Purdon's.

23 Section 1-111, it lists a variety of crimes under
24 the Pennsylvania Crimes Code. For example, Section 3121 of
25 the Crimes Code relating to rape, Section 3122.1 relating to

1 statutory sexual assault, Section 3123 relating to
2 involuntary deviate sexual intercourse, Section 3124.1
3 relating to sexual assault, Section 4304 relating to
4 endangering welfare of children, just to name a few.

5 Under Section 1-111 and under Section 5-527 of the
6 Pennsylvania School Code, Section 527(b) states as follows:
7 Notwithstanding any of the provisions of this act, any person
8 subject to this section, which is the school code, who, while
9 employed in a public or private school, intermediate unit or
10 area vocational technical school, is convicted of any of the
11 offenses enumerated in Subsection D of Section 111, and I
12 gave you the list of some of those, shall be immediately
13 terminated from such employment.

14 Those allegations, if brought to fruition, if
15 somebody investigated and decided to prosecute, and if the
16 unthinkable occurred, at the end of the process, could
17 result -- could have resulted in this gentleman's livelihood
18 at issue.

19 Beyond that, under the Pennsylvania School Code,
20 tenured professional employees can be dismissed for
21 immorality. Immorality is defined as any activity that is
22 contrary to the morals of the community.

23 Beyond that, if an individual is terminated for
24 conduct that constitutes immorality, under the Pennsylvania
25 School Code, they could lose their certificate and never be

1 able to teach again.

2 So these allegations on a web site out in the
3 public for some period of time raise serious possible
4 consequences to the individual involved.

5 We believe that goes to the potential for
6 disruption in the school environment beyond what occurred in
7 the classroom with regard to the students.

8 Additionally, Plaintiff has to establish
9 irreparable harm. The testimony makes it clear that all
10 course work, all assignments are being made up. That is
11 required actually under the Pennsylvania regulations with
12 regard to student suspensions.

13 THE COURT: Thank you very much.

14 MS. ROPER: Your Honor, if I could just have two
15 minutes?

16 THE COURT: Yes.

17 MS. ROPER: Thank you.

18 This speech would only be considered defamatory if
19 it were actually viewed as an assertion of fact.

20 The fact that no one has made any sort of
21 accusation or report or criminal prosecution suggests that
22 nobody, and as Jill said, not even her friends, took these as
23 serious assertions of fact.

24 This is parity. As offensive and as obviously
25 false as it is, it is protected. That is the Hustler

1 decision.

2 Secondly, if the issue is whether you apply the
3 Frasier standard or the Tinker standard, the Pennsylvania
4 Supreme Court is the only Court that has addressed these
5 types of issues that has had that confusion. The Federal
6 Courts do not have that confusion. The proper standard is
7 the Tinker standard.

8 Thank you.

9 THE COURT: We will recess for five minutes, and I
10 will come back and render a decision.

11 (AT this time, a brief recess was taken.)

12 THE COURT: This is the matter of Snyder versus the
13 Blue Mountain School District, a request for a temporary
14 restraining order.

15 A party who seeks a temporary restraining order
16 must demonstrate the following four factors:

17 One, a likelihood of success on the merits.

18 Two, that it will suffer irreparable harm if the
19 injunction is denied.

20 Three, that the granting of the preliminary relief
21 will not result in greater harm to the non-moving party.

22 Four, that the public interest favors such relief.

23 Preliminary injunction relief is an extraordinary
24 remedy and should be granted only in limited circumstances.
25 The injunction should issue only if the Plaintiff produces

1 evidence sufficient to convince the District Court that all
2 four factors favor preliminary relief. Moreover, the
3 Plaintiff must show that the threatened injury will be
4 immediate.

5 On the question of likelihood of success on the
6 merits, the Plaintiff brings this claim under the First
7 Amendment assertion that she was improperly punished for
8 out-of-school conduct or speech.

9 The Defendant may regulate -- the Defendant school
10 district may regulate this speech if it substantially
11 disrupts school operations or interferes with the rights of
12 others.

13 In making our decision on the temporary restraining
14 order, we bear in mind that the Federal Courts do not sit as
15 a super school board. It is not our task to micromanage the
16 school's disciplinary procedures.

17 The Supreme Court has repeatedly emphasized that
18 the need for affirming comprehensive authority of the states
19 and of school officials consistent with fundamental
20 Constitutional safeguards to prescribe and control conduct in
21 the schools.

22 It is not at all clear in this case that the
23 Plaintiff has the likelihood of success on the merits.

24 Questions exist to this Court as to the extent, if
25 at all, that this internet posting disrupted school

1 operations, or if it interfered with the rights of others,
2 and whether or not it is protected speech.

3 Irreparable harm; the United States Supreme Court
4 has held that the loss of the First Amendment freedoms for
5 even minimal periods of time unquestionably constitute
6 irreparable harm and injury.

7 However, at this point, we cannot conclude whether
8 a Constitutional violation has occurred, and while the
9 suspension is certainly a burden on the Plaintiff, it is only
10 for 10 days and mostly has been served by this time.

11 Accordingly, we find that the Plaintiffs have not
12 demonstrated irreparable harm will occur if the temporary
13 restraining order does not issue.

14 Will the granting of preliminary relief result in
15 even greater harm to the Defendants? This factor does not
16 weigh in favor of the Plaintiffs.

17 Where a Constitutional violation has not yet -- has
18 been established, the Federal District Court does not have
19 the authority to interfere with the day-to-day operations of
20 a public high school.

21 With regard to the public interest favoring the
22 issuance of a temporary restraining order, if we found that
23 the Plaintiff had a likelihood of success on the merits,
24 public interest would favor the issuance of a TRO.

25 We find, however, that at this juncture it is in

1 the public interest to allow the school the ability to
2 discipline their students.

3 The Plaintiffs' motion for a temporary restraining
4 order is denied.

5 Where do we go from here?

6 We have a motion for a TRO and a preliminary
7 injunction. Is that what we have?

8 MS. ROPER: That is the motion.

9 THE COURT: We presume that the next step is for me
10 to schedule a hearing on a permanent injunction, is that
11 correct?

12 MS. ROPER: I think that is right, Your Honor,
13 after some opportunity for discovery.

14 THE COURT: That is your pleasure. I think that
15 you're entitled to that.

16 MS. ROPER: Prior to a hearing for a permanent
17 injunction, there should be a period of time for discovery.

18 The Court has stated that the issue is factual
19 dispute, so we need to investigate that through discovery.

20 Your Honor, if I could ask the Court's indulgence
21 to consult with my client and consult with opposing counsel
22 and then propose a schedule to the Court?

23 THE COURT: Would you do that?

24 MS. ROPER: Yes.

25 THE COURT: If you would contact me or Sylvia

1 Murphy, and then maybe we can have a conference.

2 Thank you.

3

4 (At this time, the proceedings in the

5 above-captioned matter adjourned.)

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REPORTER'S CERTIFICATE

I, SUZANNE A. HALKO, Official Court Reporter for the United States District Court for the Middle District of Pennsylvania, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the within-mentioned proceedings had in the above-mentioned and numbered cause on the date or dates hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my supervision.


Suzanne A. Halko, RMR, CRR
Official Court Reporter

REPORTED BY:

SUZANNE A. HALKO, RMR, CRR
Official Court Reporter
United States District Court
Middle District of Pennsylvania
Scranton, PA 18501-0090

(The foregoing certificate of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

EXHIBIT H

EXHIBIT H



BLUE MOUNTAIN MIDDLE SCHOOL

"DEDICATED TO EXCELLENCE"

James S. McGonigle
Principal

Debra L. Frain
Counselor

James R. Ketner
Assistant Principal

Michelle S. Guers
Counselor

March 23, 2007

Mr. and Mrs. Steven Snyder
209 Summer Valley Road
Orwigsburg, PA 17961

Dear Mr. and Mrs. Snyder:

I regret to inform you that your daughter, Jill Snyder, has been given 10 days out of school suspension effective Thursday, March 22nd through and including Wednesday, April 4, 2007. This out of school suspension is for making false accusations against Mr. McGonigle, Middle School Principal and copyright laws in using a photograph of Mr. McGonigle that was property of the Blue Mountain School District. These violations of the Blue Mountain Middle School Discipline Code and Blue Mountain School District Policy were presented at a meeting in Mr. McGonigle's office on Thursday, March 22, 2007 at 9:55 a.m. Present at this meeting were Mrs. Snyder, Jill Snyder, Mrs. Guers, and Mr. McGonigle. As you are aware, the Pennsylvania State Police have been informed of this incident so that criminal charges may be filed.

During the time of suspension, Jill is not permitted on School District property without permission. She will not be allowed to attend school dances for the remaining of the 2006-2007 school year.

Mrs. Snyder has informed me that the earliest she is available for an informal hearing was Wednesday, March 28, 2007. Therefore, an informal hearing is scheduled for Wednesday, March 28, 2007 at 8:30 in the Middle School Office.

I have taken this action in accordance with the discipline policy, as published in the Parent/Student Handbook and as fully described in School District policy. If you have any further concerns, please contact me.

Sincerely,

James S. McGonigle
Principal

cc. Dr. Romberger

EXHIBIT I

EXHIBIT I

Blue Mountain School District
Disciplinary Notice

Student's Name: JILL SNOYER Date: 3/22/07
 Student's Address: 209 SUMMER VALLEY ROAD ONWIGSBURG PA. 17961
 Phone #: 943-2307 Grade: 8
 Level of Infraction: 4 Referrals to Date: _____ HmRm: 816

Note: Student is/is not involved in extracurricular or co-curricular activities.

List activity(s): _____

- | | | |
|--------------------------------|---|--|
| 1. () tardy to school | 12. () disruption/inappropriate behavior | 23. () defiance/insubordination |
| 2. () obscenity or profanity | 13. () disrespect | 24. () truancy/unexcused absences |
| 3. () cutting class | 14. () cutting detention/suspension | 25. () late to class/assigned area |
| 4. () out of assigned area | 15. () hall violation | 26. () leaving school without permission |
| 5. () fighting | 16. () tobacco violation | 27. () drug/alcohol violation |
| 6. () failure to return forms | 17. () failure to be prepared for class | 28. () public affection |
| 7. () cheating | 18. () forgery | 29. () theft |
| 8. () vandalism | 19. () cafeteria violation | 30. () electronic equipment violation |
| 9. () dress code violation | 20. () sexual harassment | 31. () driving/parking violation |
| 10. () merit pass violation | 21. () work study/release violation | 32. () weapons |
| 11. () food/drink violation | 22. () threats to others | 33. <input checked="" type="checkbox"/> other: <u>MAKING FALSE</u> |

Comments: _____

ACCUSATIONS ABOUT THE SCHOOL PRINCIPAL COPYRIGHT LAWS

Action Taken By Teacher Prior To Referral:

- | | |
|-------------------------------------|------------------------------------|
| 1. () Checked Student's Folder | 5. () Telephoned Parent |
| 2. () Held Conference with Student | 6. () Held Conference with Parent |
| 3. () Consulted Counselor | 7. () _____ |
| 4. () Changed Student's Seat | |

Teacher's Signature _____

Action Taken By Administrator: W/STUDENT &

- | | |
|---|--|
| <input checked="" type="checkbox"/> Administrative Conference <u>MOTHER IN OFFICE</u> | () In School Suspension _____ |
| () Detention _____ | <input checked="" type="checkbox"/> Out of School Suspension <u>3/22/07 - 4/4/07</u> |
| () Saturday Detention: _____ | () Other _____ |

Comments: JILL WILL SERVE 10 DAYS OUT OF SCHOOL SUSPENSION DURING THIS TIME SHE IS NOT PERMITTED ON SCHOOL DISTRICT PROPERTY. ARRANGEMENTS WILL BE MADE FOR HER SCHOOLWORK

Administrator's Signature _____ Date 3/22/07

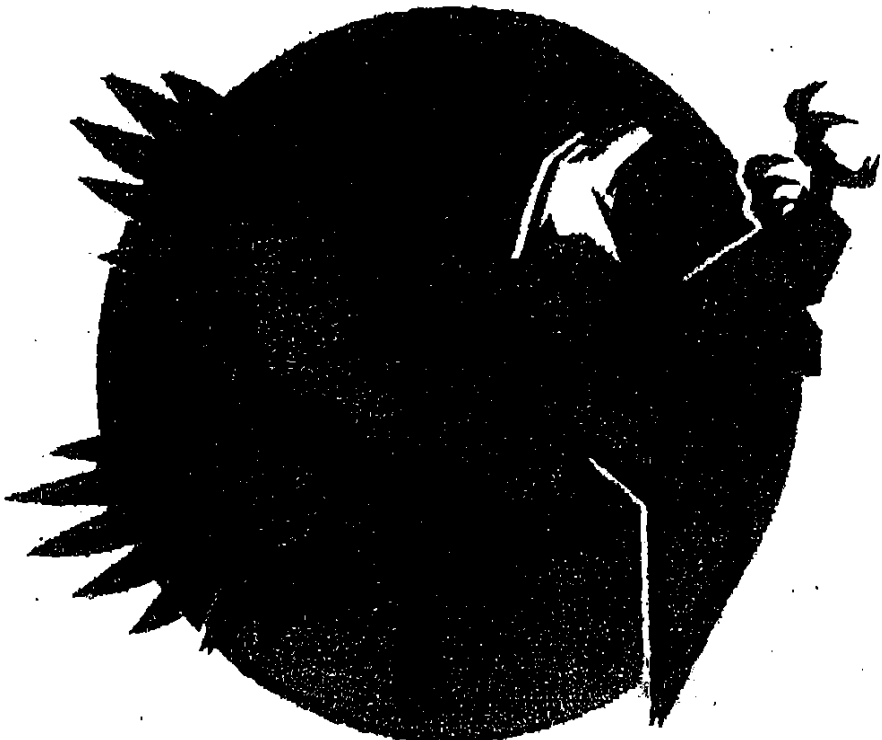
Dear Parent/Guardian:

The purpose of this notice is to inform you of the infraction(s) involving your child and the corrective action taken in accordance with the Blue Mountain School District STUDENT DISCIPLINE CODE. In order that there will not be any further occurrences of this nature, you are urged to both support and cooperate with the action. Together we must strive to provide the best educational environment in which our students will learn and grow.

EXHIBIT J

EXHIBIT J

**BLUE MOUNTAIN
MIDDLE SCHOOL**



*Student - Parent Handbook
2006 - 2007*

Promotion

Students must earn 5 units to be promoted to the next grade. While two units may be earned in rotational courses, 4 of the 5 units must be earned in major subjects.

Assignment to grade level is also considered in the grade level promotion process. The principal evaluates such factors as chronological age, and social/physical development in determining what grade level is most appropriate for the student.

Class Attendance

If students are absent for thirty days during the school year, they may be subject to failure for the course(s) in which they are enrolled during that period. For semester courses, fifteen days will apply, and all other courses meeting less than a full year will use the same fractional time (1/6) for this policy. A review committee appointed by the principal will review each case individually and will make recommendations to the principal for the disposition of each case.

Summer School

Failure of three or more major subjects would prevent a student from being promoted. Students failing two subjects may be able to repeat those subjects in summer school and be eligible for promotion.

Records Policy - Parental Notification

The Blue Mountain School District records policy allows a student's school records to be forwarded to another school, Intermediate Unit, or State educational agency either with parental permission or without such permission if the student is enrolled in another educational setting and is no longer a student in the Blue Mountain Schools.

Parents are hereby notified that necessary student records will be forwarded to the school where the child is enrolled upon request of the receiving school. Parents have the right to examine student records and be given a copy if desired. Written parental permission to forward records will be obtained whenever possible.

Student Behavior

SECTION ONE

In this Section You Will Find:

- Statement of Purpose
- Statement of Authority
- Student Rights
- Student Responsibilities
- Student Rules
- School District Rules

STATEMENT OF PURPOSE

Student behavior is not merely convenient conformity by the students to the wishes of adults, but the conscious development of self-discipline and self-direction toward socially desirable ends. Schools, to be effective, must give all students the opportunity to learn; disciplined behavior is an outcome of education. Students must be taught that the advantages of group living demand that individual actions be tempered and restrained.

If a pupil elects to evade his/her responsibility for good citizenship, he/she may be referred to the principal. The principal takes into consideration the individual and his/her personal adjustment as well as the impact of the pupil's behavior will have on the school community. The great majority of pupils meet their responsibility and never become involved in any disciplinary action. All things considered, the principal's action may range from friendly discussion to suspension. In extreme disciplinary cases, a student may be expelled by the Board of School Directors.

In each discipline situation, it is a primary aim of school officials to impress each student, by effective faculty counseling and guidance, of the need, value and advantage of good conduct.

STATEMENT OF AUTHORITY

All the students enrolled in the Blue Mountain School District are expected to conduct themselves in accordance with the rules of the system and individual schools.

Principals and teachers are directed to maintain order in the schools so that learning can occur. Maintenance of order applies during those times when students are under the direct control and supervision of school district officials. This authority is granted in Section 1317 of the Pennsylvania Public School Code. It states:

Every teacher, vice-principal and principal in the public schools shall have the right to exercise the same authority as to conduct the behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them." (In loco parents)

The Board of School Directors has granted authority to its principals and teachers to exercise necessary authority to maintain appropriate decorum within the buildings and classrooms. Building level principals and their designees will act in a loco parents manner to ensure the safety and welfare of all students. Teachers shall have the authority, and it shall be their duty to make and enforce by reasonable means rules and regulations to govern the behavior and promote learning in their respective classes. Principals and teachers of the Blue Mountain School District are directed to maintain such order in the schools as will facilitate learning by the pupils.

In the event that any provision of this Behavior Code is found to be in conflict with the Public School Code of 1949, as amended or PA Code Title 22, PDE Regulations, school district policy, administrative procedures, or any other applicable constitutional, statutory or regulatory provision, such statute or provision shall govern, and the conflicting portion of this Behavior Code shall be considered null and void, but the remainder of the Behavior Code shall remain in full force and effect.

School principals are authorized, subject to approval of the Superintendent, to summarize or restate the provisions and/or omit selected provisions of this Behavior Code when publishing school handbooks in an effort to concisely convey to students and parents the Behavior Code. This authority is not, nor should it be, construed as any attempt to withhold information, for the provision of this Behavior Code prevails over statements published in school handbooks.

STUDENT RIGHTS

This section summarizes the basic principles of student rights. With each right comes a responsibility, and that right must be viewed in relationship to the health, safety, and welfare of the majority of students within each school. The principal, under the supervision of the Superintendent and within School Board policies, shall assume administrative responsibility and instructional leadership of the school to which he or she is assigned. The faculty and staff shall assist in the orderly operation of the school and ensure the following rights of students.

- To be informed of School Board policies and individual school rules.
- To appeal a decision in an orderly manner.

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- To be treated with respect by other students, school personnel, and visitors.
- To expect that their property will be respected by other students and school personnel.
- To have a safe and orderly school.
- To expect the rules to be enforced without discrimination.
- To receive district curriculum descriptions that will help one make informed choices.
- To have equal opportunity with regard to academic programs and extracurricular activities.
- To have privacy of one's personal possessions unless appropriate school personnel have reasonable cause to believe a student has any object or material which is prohibited by law or school board.
- To expect that schools will keep student records safe and confidential.
- To wear clothes of one's choice, or the school uniform, as long as clothes are appropriate for school. Clothing should adhere to the school dress code. Clothing should not disrupt the learning environment or pose any threat to the health and safety of students.
- To attend school and learn in an environment free of sexual harassment or malicious harassment.

STUDENT RESPONSIBILITIES

Every student shall:

- Attend school regularly and be on time for class.
- Be diligent in his or her studies.
- Conform to the rules of the school approved by the Board of Education and submit to such discipline as would be exercised by a kind, firm and judicious parent.
- Provide the school with adequate explanation and appropriate documentation to explain an absence.
- Request makeup assignments from teachers upon return to school and complete them within an appropriate length of time.
- Treat other students, school personnel, and visitors with respect.
- Respect others' property by not damaging, or taking it.
- Treat school property with respect and to act in a way that does not interfere with the rights of others and is not harmful to health and/or safety of others.
- Seek help first, to avoid a fight.
- Become familiar with the Code of Student Conduct, all school rules, and all classroom rules.
- Ask for assistance from school personnel in selecting courses
- Request participation in academic programs and extracurricular activities that match with your abilities.
- Cooperate with the teacher and contribute to a free unprejudiced atmosphere.

41

absent. If there is no improvement in the attendance, a letter shall be sent to the parent requiring a doctor's excuse for all future absences. Failure to present a doctor's excuse will result in unexcused absence procedures.

The fact that a parent has sent a written explanation to the school does not excuse the absence. An absence becomes excused only when the administration has classified the absence as such. Under no circumstance is a student permitted to sign a parent's name.

NOTE: Each excuse must have the student's full legal name or it can not be credited to the right file. Each excuse must have the **CORRECT** dates of absence or it can not be credited to the right dates. Each excuse must show a reason for the absence. Each excuse must be signed by the parent/guardian. Please put your child's homeroom number and grade on the excuse.

Excused Absences: Reasons for excused absences include:

- Sickness, injury, death in the family, or some other insurmountable condition.
- Documented appointments with health care professionals.
- Documented absence for religious instruction or religious holiday.
- Participation in an academic class or school-sponsored activity approved by the principal.
- Court appearances (copy of subpoena required).
- Prior approved non-school sponsored educational field trips (one per year).
- Unavoidable emergencies (reviewed by principal).
- Out of School Suspension (OSS).

Unexcused Absences

- Oversleeping.
- Missing the bus.
- Routine baby-sitting.
- Refusing to come to school.
- Hurling.
- Take a trip (vacation) without an approved educational field trip form by administration.
- Failure to turn in an excuse within three (3) school days, when required.
- Failure to provide a doctor's excuse within three (3) school days, when required.
- Any other circumstances deemed unexcused by the principal.

Educational Leave Policies and Procedures: Parents/guardians may request an educational field trip for their child(ren) during the school year. Parents/guardians should consider a request on the following conditions:

- Trips may not exceed the maximum of five (5) days per school year.
- All days beyond the maximum of five (5) days will be considered unexcused and/or unlawful for students.
- Parents are encouraged not to plan trips the first ten (10) days of school or the last ten (10) days of school.
- The purpose of the trip must be stated and how it supplements district's curriculum.

- Cooperate fully and exert every effort to achieve mastery of the curriculum
- Come to school in wear clothes which are not dangerous to health or safety, do not disrupt the learning process, and stay within school dress code.
- Not carry or conceal any such material prohibited by law or that would detract from the educational process and to accept the consequences for any contents stored within the lockers.

- Treat others equitably and fairly.
- Conduct yourself and your activities so as not to harass others and to report harassment or discrimination situations to school administrators.

STUDENT RULES

Attendance * Please call 628-6000 ext. 7503 to report an absence

The school law of Pennsylvania requires the regular attendance of all pupils between ages eight and seventeen years of age. Once a student has enrolled, his/her school attendance is governed by the following guidelines:

The parents of any pupil who is under seventeen years of age and who has been absent illegally for a total of three days or six half days are guilty of truancy from school which is a violation of the state attendance law. Any pupil aged seventeen or older who is absent for five days for inexcusable reasons may be suspended up to 10 days. If a student does not return to school, expulsion procedures may be recommended.

Students are expected to be in school on time every day and to be on time to all classes. All students arriving tardy to school must report to the office immediately and sign in the tardy book. Excessive (four or more per year) unexcused tardiness to school is a punishable offense.

Students who are truant (e.g., absent from school without permission of parents and school authorities) will be disciplined. A telephone contact may be made to verify students' absences.

Students arriving after 10:00 a.m. (high school/middle school) 10:50 a.m. (elementary school) will be considered absent 1/2 day; moreover, students leaving prior to 1:00 p.m. (high school/middle school) 1:35 p.m. (elementary school) will be considered absent 1/2 day.

When students return to school after an absence, they will bring a signed statement from their parent or guardian stating the date and reason for the absence. If an excuse is not brought in for classification within three days, it will automatically be classified as unexcused. If students have been absent three or more consecutive days or an excessive amount of days, they may be required to bring along a physician's note stating the reason for the absence. If an examination is to be made up because of absence, the students must make arrangements with the teacher concerned within two days after they return to school.

After an excessive number of absences (i.e., excused or unexcused), a phone call shall be made to the parents to make them aware of the total days

- Students will ride only their assigned bus to and from school. Written parental permission, with principal approval, is required to get off at a different stop.
- Except in an emergency situation, students are not permitted to ride a different bus. All such requests must be approved by the principal.

General Computer Usage: Students are responsible for good behavior on school computers, both in school and at home (sign-out equipment). Computer files, including email, are not private. The use of the school's computer and computer networks, computer software, data files, and intellectual property is a privilege. It may be revoked or other action may be taken for violations of any of the following rules:

- School Classroom and Lab Computers should be used for educational purposes; that is, report writing, information retrieval, research, and Internet access. They may not be used for personal objectives.
- Only authorized software should be used on school computers. Authorized software refers to those applications and packages that have been placed in the classroom or on the hard drives by school officials. Students may not load other software that has been placed there by school officials.
- Students are not permitted to change titles of folders, the names of hard drives or printers, desktop patterns, or any other setting that has been configured by school officials.
- Students are not permitted to change the configurations of the hard drives, or to move folders or applications in or out of any folders, including System Folders and Preferences folders. Students should not access, change or delete files or other intellectual property belonging to others, including programs and/or data files not owned by the user, without their expressed permission.
- Students are not permitted to add, delete, or change passwords to any application folder, except when authorized to do so by the school administration.
- Students may not create, copy, receive, or use data, language or graphics which are obscene, threatening, abusive, or otherwise inappropriate at school or on sign out equipment at home.
- Students may not violate or attempt to violate the security of any computer (including sign-out equipment) or the computer networks.
- Students may not steal or destroy any of the school's computer hardware or peripherals, or steal or destroy computer software, data files, or intellectual property owned by the school or other persons.
- Students may not take any unauthorized actions which deny access to, disrupt or destroy the service of a computer or the computer networks.
- Students may not use computers, computer networks, e-mail systems, computer software, data files, or other intellectual property in any unauthorized way.

- The request must be made by the parent/guardian five (5) days prior to the student's requested leave. Forms are available at building offices. Administrative responses to submitted forms by parents/guardians will be made within 48 hours of submission.

Each request will be reviewed by the principal prior to approval. The following will be taken into consideration by the principal in granting permission for the trip.

- Student's academic standing.
- Student's attendance record.
- Student's disciplinary record.
- If approval is given prior to the trip, the student's absence will be listed as excused. If prior approval is not received, the absence will be classified as unexcused/unlawful. Should the student's absence extend beyond the approved time, those days will be classified as unexcused/unlawful.
- The student is expected to complete all school work that is assigned during the School absence. Such assignments will be provided to the student by the teacher prior to the trip. It will be the student's responsibility to contact teachers and make up, any missed assignments.
- Permission will not be granted for trips/tours during the district's standardized testing periods, the state's testing periods and the secondary school examination periods at the end of the first and second semester.

School Bus Rules: It is a privilege to ride a school bus.

- Students must
- Obey the driver.
 - Stand off the roadway while waiting for the bus.
 - Be at the bus stop on time.
 - Sit according to the seating chart assigned by the bus driver.
 - Remain seated when bus is in motion.
 - Keep arms, legs and head inside the windows.
 - Remain quiet. Unnecessary conversation with the driver is dangerous.
 - Observe classroom conduct at all times while aboard the bus.
 - Not eat or drink while on the bus.
 - Whenever boarding or departing, cross the road 10 feet in front of the bus when the driver signals that it is clear to cross. Always check traffic when getting on or off the bus.
 - Pay for damage to school buses or property.
 - Follow discipline code.

Students and Parents please note:

- From time to time the Blue Mountain School District may place a video camera on selected school buses. The placement of the camera(s) will be determined by administration as needed.
- The camera may record a video of activity on the bus. The video may be used for investigative and/or disciplinary purposes.
- The camera will not record audio. The audio component on the camera will be disabled at all times.

- Use of the network to misrepresent others using the network.
- Use of the network for commercial or for-profit purposes.

Dress Codes: The following items are prohibited during the school day:

- Excessively large, sagging, or improperly fitting clothing.
- Muscle shirts, half shirts, bare midriff clothing.
- Tank tops (Blue Mountain Middle School).
- Undergarments worn as outer garments.
- See through, provocative or excessively tight clothing.
- Halter tops, strapless shirts or spaghetti strap garments.
- Shorts will not be permitted from the beginning of November to the end of March.
- Jewelry such as earrings, studs or rings worn in areas other than the ears.
- Clothing which bears offensive, disruptive logos or messages, pictures, drawings which are drug, alcohol or sexual in nature or relative to violence.
- Hats, hoods, bandanas or sunglasses in the building.
- Torn or unsafe clothing.
- Chains, chain wallets, straps or any other item which may cause harm to another person.
- Studs, rivets on clothing.
- Clothing not worn as designed/intended.
- Unsafe footwear such as flipflops, sandals without support straps, clogs, etc.
- Clothing of unacceptable length.
- Administrators on a building level have the authority to judge the appropriateness and safety of apparel, and/or appearance.

SCHOOL DISTRICT RULES

- Search and Seizure**
- Lockers and desks are school property and are provided for the convenience of the student. Students may use the lockers and/or desks to store their school supplies and personal belongings.
 - School authorities may search a student's locker or desk and seize any illegal/prohibited materials. Such material may be used as evidence against the student in disciplinary proceedings. Prior to the search students shall be notified and given an opportunity to be present. However, where school authorities have a reasonable suspicion that the locker or desk contains materials which pose a threat to the health, welfare and safety of students and/or other school personnel, student lockers or desks may be searched without prior warning.
- Search of Individuals:** A search must be justified at its inception on the basis of reasonable suspicion, and it must be reasonable in scope. If a principal or designee has reasonable suspicion to believe that a student is in possession of illegal/prohibited materials, he or she may conduct a search.

Internet Usage The use of the Internet computer network for illegal, inappropriate, unacceptable, or unethical purposes by students or employees is prohibited. The activities listed below are strictly prohibited by all users of the network. The Blue Mountain School District reserves the right to determine if any activity not appearing on the list below constitutes an acceptable or unacceptable use of the network. These prohibitions are in effect any time school district resources are accessed in any way whether in school, indirectly through another internet service provider. Each student and parent will be required to sign a CSI Acknowledgement and consent form prior to internet usage.

- Allowing an unauthorized person to use an assigned account.
- Use of the network for non-work or non-school related purposes.
- Use of network to access or transmit obscene or pornographic materials.
- Use of the network to access or transmit material likely to be offensive or objectionable to recipients.
- Use of the network to participate through e-mail for non-educational purposes or activities.
- Use of the network to participate in inappropriate and/or objectionable discussions or news groups.
- Use of the network to transmit hate mail, harassment, discriminatory remarks, and other anti-social communications.
- Use of the network to order or purchase in the name of the school district or in the name of any individual any type of merchandise or service. All costs to the district or any individuals incurred because of this type of violation will be the responsibility of the user.
- Use of the network to access any fee-based on-line/internet service. All costs incurred to the district or any individual because of the type of violation will be the responsibility of the user.
- Use of the network which results in any copyright violation.
- The illegal installation, distribution, reproduction or use of copyrighted software on district computers.
- Use of the network to intentionally obtain or modify files, passwords or data belonging to other users.
- Use of school technology or the network for fraudulent copying, communications or modifications of materials in violation of local, state and federal laws.
- Loading, downloading, or use of unauthorized games, programs, files, or other electronic media.
- Malicious use of the network to develop programs that harass other users or infiltrate a computer system and/or damage the software components of a computer system.
- Destruction of district computer hardware or software.
- Use of the network to participate in unauthorized Internet Relay chats (online real-time conversations).
- Use of the network to facilitate any illegal activity.

Corporal Punishment. Corporal punishment as a response to a rule infraction is not used in the Blue Mountain School District, however, reasonable force may be used by teacher and school authorities under the following circumstances:

- To quell a disturbance.
- To obtain possession of weapons or other dangerous objects.
- For the purpose of self-defense.
- For the protection of persons or property.

Academic Restriction

- If students receive two failing grades (high school/middle school) in a marking period, in major subjects, they will be placed on Academic Restriction.
- Students whose names appear on the restriction list are restricted from all ninth period non-graded activities. They will report to homeroom to work on their academic deficiencies. Students may report to a teacher for work or help with a pass issued by that teacher.
- Progress will be re-evaluated every three weeks. Students, who have improved to the administrator's satisfaction, will be released from restriction and have full privileges restored.

Middle School/High School Detention

- Daily detention, if needed, may be held at the high school or the middle school. IT shall begin at 3:00 p.m. (or earlier), when needed, and end at 4:30 p.m. (or earlier). One (1) calendar day notice may be given to the student prior to beginning of serving detention.
- Saturday detention, if needed, may be held at the high school or middle school from 8 a.m. to 11 a.m. A two (2) days notice may be given to the student prior to serving Saturday detention.
- Students assigned will bring work to do; if not, they will be given work. Free reading is not acceptable work. No talking and sleeping. Detention may be rescheduled only for cases of extreme emergency or previously scheduled doctor's appointments. Work, athletic practices and games, band practices, etc., are not considered emergencies.
- If a student is absent the day of his/her detention, he must serve the next scheduled detention after his/her return to school.

Elementary School Detention

- Detention may be assigned in the elementary school to students in grades three through five.
- Detention will be considered only after other disciplinary actions have been taken and deemed as ineffective in changing undesirable behavior. Detention may also be issued to a student with no prior discipline problems as a response to an extreme disciplinary infraction.
- Detention may only be assigned by the principal or assistant principal

• Detention will be scheduled by the principal/assistant principal with the student's parents/guardians.

- Detention will be held in the child's school building from 3:30 - 4:30 p.m.
- Parents are responsible for transporting their children home after their detention time has been served.
- Parents will be given a written confirmation of their child's detention assignment in the form of a written letter from the principal/assistant principal's office.

Flag Salute and Pledge of Allegiance

- It is the responsibility of every student to show proper respect for his/her country and its flag. Students may decline to recite the Pledge of Allegiance and may refrain from saluting the flag on the basis of personal belief or religious convictions.
- Students who choose to refrain from such participation shall respect the rights and interest of classmates who do wish to participate.

• Bookbags or backpacks will not be permitted to be carried between classes. However, they will be permitted to be brought to school and taken home. Students will be given additional time to go to their lockers during the school day. Gym bags may be used for physical education classes.

SECTION TWO

In This Section You Will Find:

- Discipline Codes by Levels
- Level I
- Level II
- Level III
- Level IV

DISCIPLINE CODES BY LEVELS

To establish reasonable consistency in the schools, a uniform Discipline Code has been developed. Definitions of terms used can be found in the Glossary of Terms. School and teachers may develop individual rules and disciplinary practices which supplement the Code but do not conflict with it. The Code applies to all students enrolled in the Blue Mountain Schools in kindergarten through grade 12 and adult education.

Infractions and the responses to them are divided into four levels. Each level represents progressively more serious behavior and consequences. One of any combination of responses may be applied to any infraction. This section

Example Responses

- Teacher's educational assignments.
- Mandatory tutoring/peer counseling
- Parental contact by teacher.
- Verbal reprimand.
- Counseling.
- Revocation of property or restriction.
- Withdrawal of privileges.
- Behavioral contracts.
- Grade point deduction (cheating).
- Classroom management plan.
- School Service Work (SSW).
- Detention.
- Instructional Support Team (IST).
- Warning of referral to Level II.

LEVEL II - DISCIPLINE CODE

Level II offenses or intermediate acts of misconduct may include acts of misconduct previously identified which require administrative intervention. It may also include repeated acts of misconduct and acts directed against persons or property but which do not seriously endanger the health and safety of others. Level II offenses must be reported to the school administrator/designee (e.g. dean, behavioral resource teacher) because the seriousness or frequency of misconduct requires another level of intervention. School support staff and/or community resource agencies may be involved. The school administrator/designee, after review of the student's explanation, consultation with school personnel involved, and further investigation (when needed), will determine the appropriate disciplinary action, consistent with this Code, and attempt to contact parents.

Example Infractions

- Repeated Level I Offenses.
- Truancy.
- Failure to follow driver/rider procedure.
- Destruction of property.
- Disruptive behavior.
- Cheating/plagiarism (middle school/high school).
- Forgery.
- Gambling.
- Misconduct on school bus or at bus stop.
- Stealing/theft (less than \$20).
- Unauthorized assembly, publication, etc..
- Unsafe acts/actions.
- Cutting Classes.

of the Code of Student Conduct identifies example infractions for which a student may be disciplined and sets forth example responses. Note, however, that this list is not all-inclusive and a student committing an act of misconduct not listed will be subject to discretionary authority of the principal. Consistent with this Code, it is the responsibility of the principal or designee to determine the level of the offense and its appropriate response. The principal, assistant principal, teachers, bus drivers, and other supervisory personnel are responsible for student discipline. Discipline should be applied after consideration of the eventual effect on the behavior of the student and it should promote improved conduct.

It is the policy of the School Board that there shall be zero tolerance of misbehavior of all kinds.

LEVEL I - DISCIPLINE CODE

Level I offenders are acts of misconduct which interfere with orderly classroom procedures, school functions, extracurricular programs, approved transportation, or a student's own learning process.

Level I offenses will be handled first by the teacher or other staff member involved. When the teacher or other staff member involved determines that additional action is necessary because of continued violation or other concerns, the student will then be referred to the principal or designee for appropriate disciplinary action. The teacher or school administrator/designee, after review of the student's explanation, consultation with school personnel involved, and further investigation (when needed) will determine the appropriate disciplinary action, consistent with this code.

Example Infractions

- Hall pass violation.
- Lunch room infractions.
- Cheating (elementary school).
- Classroom/school disruption.
- Dress code violation.
- Harassment/Intimidation.
- Playground violation.
- Late to class.
- Electronic devices.
- Failure to follow classroom management rules.
- Failure to bring in notes/excuses.
- Public affection.
- Out of assigned area.
- Eating, drinking, outside of designated area.
- Bookbag violation.

Example Infractions

- Repeated Level II Offenses.
- Unsafe Driving Act.
- Abusive Language or gestures to school personnel.
- Assault.
- Breaking and entering.
- Defiance.
- Disorderly conduct.
- Destruction of property/vandalism.
- Extortion/threats.
- Fighting.
- Harassment/Intimidation of a more serious nature.
- Repeated misconduct of a more serious nature.
- Sexual Harassment.
- Smoking/Tobacco possession or use.
- Theft (more than \$20).
- Trespassing.
- Leaving school without permission.
- Student hazing.
- Abusive language or gestures.

Example Responses

- Parental contact by administration.
- Behavioral contract (written).
- Referral to Support Services.
- Return of property or restitution for damages.
- In-school suspension.
- Long-term bus suspension.
- Out-of-school suspension.
- Referral to alternative discipline programs.
- Temporary removal from participation extra-curricular/co-curricular activities.
- Referral to appropriate prevention or treatment program.
- Referral to law enforcement.
- Saturday detention.
- School Service Work.
- Fines/Citations.
- Referral for student assessment.
- Warning of referral to Level IV.

LEVEL IV - DISCIPLINE CODE

The most serious acts of misconduct are included in this level. Committing any of these acts may be sufficient grounds for out-of-school suspension and/or consideration for expulsion. Major acts of misconduct must be reported immediately to the school administrator/designee. These violations

- Tardy to school.
- Computer misuse.
- Curing detention.
- Merit work pass, work study or work release violation.
- Written derogatory comments about students/teachers/staff.
- Insubordination.
- Inappropriate behavior.
- Deceiving school personnel.

Example Responses

- Level I response.
- Parental contact (by teacher or administrator).
- Verbal reprimand.
- Assigned bus seat.
- Behavior contract.
- Withdrawal of privileges.
- Confiscation of unauthorized material.
- Return of property or restitution for damages.
- Referral to student services.
- School Service Work.
- Suspension from bus.
- Suspension from extra curricular-activities.
- Detention.
- Saturday detention.
- Fines/Citations.
- Suspension of driving privilege.
- Assigned/reassigned bus seats.
- Warning of referral to Level III.

LEVEL III - DISCIPLINE CODE

Level III offenses are serious acts of misconduct. They include but are not limited to : repeated acts of misconduct, those acts with prior warning of referral to Level III Action, serious disruptions of the orderly conduct of school, threats to the health, safety, and property of self or others, and other acts of serious misconduct.

Level III offenses must be reported immediately to the school administrator/designee and will follow the established investigative procedure and the assignment of disciplinary action. When an emergency exists, procedures for handling it shall be put into effect immediately to protect the safety of all students. The school district must immediately initiate prosecution for Level III offenses.

NOTICE: Use, possession, distribution, and sale of tobacco products are prohibited on school property and on school buses. School district must initiate prosecution.

are so serious that they may require district administrators, outside agencies, and/or fines. Such acts may also result in criminal penalties. The principal/designer may recommend the expulsion of any student who has committed a serious breach of conduct.

NOTICE: ZERO TOLERANCE OF VIOLENCE IN SCHOOL INCLUDING PROHIBITION OF VIOLENCE AGAINST SCHOOL DISTRICT PERSONNEL. Violence in schools or on school buses will not be tolerated.

Battery against any school personnel by a student is a Level IV violation of the Code of Student Conduct. A student who deliberately and knowingly commits an act of battery against school personnel will be suspended from school up to ten (10) days. The principal may recommend expulsion and will offer to assist the staff member in pressing such charges as are appropriate. Subject to federal and state mandates, any student charged with a violation such as bomb threat, aggravated assault, battery, or aggravated battery upon a school employee will be removed from the classroom immediately and may be placed in an alternative school setting pending disposition. Any student found to have committed a violation of Act 26 of Pennsylvania (i.e., weapons prohibited policy) may be expelled or may be placed in an alternative school setting.

NOTICE: PROHIBITION OF WEAPONS. Violation of weapons is a Level IV violation of the Code of Student Conduct. Weapons and the use of weapons are prohibited on school property, including buses.

A student who possesses, sells, intends to sell, distributes, intends to distribute, displays, intends to display, transfers, intends to transfer, or uses any firearms/explosive, or weapons of any type, or any article or substance not normally considered to be a weapon, including a look-alike will be suspended up to ten (10) days, and the principal will request a formal hearing by the Board of Education to determine the term of expulsion. In addition, the principal will refer the matter to the local police for criminal prosecution.

A weapon does not include any device which is authorized by the school for legitimate educational purposes, such as tools, scissors, compasses, pencils, implements for art class, and the like. Any student, however, using any such common item in an aggressive, threatening and/or intimidating manner shall be considered in possession of a weapon, unless the student can demonstrate that the item was/is used in a manner reasonably understood to be its common purpose. The Principal shall be given considerable latitude to determine the intent of the student in such matters.

NOTICE: PROHIBITION OF ALCOHOL AND DRUGS. The use, possession, sale, intending to sell, transferring, intent to transfer, distributing or intending to distribute illicit drugs and alcohol is not permitted and is a Level IV violation of the Code of Student Conduct. Board Policy prohibits its use, possession, sale, intending to sell, transferring, intent to transfer,

distribution or intending to distribute alcohol or controlled substances. Drugs which require a physician's prescription or the possession of which is prohibited by law, or those classified as "Designer Drugs" under Pennsylvania statutes. Also prohibited are the use, possession, sale, intending to sell, transferring, intent to transfer, distribution or intending to distribute any substance to attain a mood-altering effect, and the possession of any equipment or device for preparing or taking drugs.

A student using, possessing, selling, intending to sell, transferring, intending to transfer, distributing, or intent to distribute under the influence of any item listed above, will be immediately suspended from school for up to ten (10) days. Following an informal administration hearing, the principal will request a formal hearing by the Board of Education to determine the term of expulsion. In addition, the principal will refer the matter to the local police for criminal prosecution.

NOTICE: PROHIBITION OF MISCONDUCT ON SCHOOL BUS/AT BUS STOP - Violation of Board transportation policies, including disruptive behavior on a school bus, may be Level IV violation of the Code of Student Conduct.

NOTICE: PROHIBITION OF SEXUAL HARASSMENT/INDECENT EXPOSURE - Violation of sexual harassment policy may be a Level IV violation of the Code of Student Conduct.

Example Infractions

- Repeated Level III Offenses.
- Aggravated battery.
- Alcohol.
- Arson.
- Assault.
- Battery.
- Breaking and entering.
- Drugs.
- Firearms/explosive.
- Homicide.
- Inciting, leading, or participating in acts that substantially disrupt orderly conduct at a school or school function.
- Kidnapping.
- Making false accusations about school staff member/another student.
- Robbery.
- Serious breach of conduct.
- Serious misconduct on school bus or at bus stop.
- Sex offenses.
- Sexual Battery.

- Sexual harassment of a more serious nature.
- Stolen property: possession, use, distribution, or sale.
- Grand larceny.
- Unsafe activities.
- Weapons (other than firearms).
- Bomb threat.
- Fire Alarms.

Example Responses

- Parental contact (mandatory).
- Return of property or restitution for damages.
- Referral to student support services.
- In-school suspension.
- Out of school suspension.
- Referral to law enforcement.
- Recommendation for expulsion.
- Long-term bus suspension.
- Referral of students to alternative placement.
- Referral for student assessment.
- Fines/Citations.

SECTION THREE

In This Section You Will Find:

- Grievance Procedure for Students and Parents.

GRIEVANCE PROCEDURES FOR STUDENTS AND PARENTS

Student Rights

- Students have the right to present a complaint regarding unfair treatment.

Student Responsibility

- Students have a responsibility to learn and follow procedures for filing complaints.

Grievance procedures are used to handle serious problems when students believe there has been a violation of the code of Student Conduct, including due process. Except in instances where there is a clearly defined procedure other than the one described here, a student grievance should be pursued sequentially through four levels.

Level I - Informal Discussion: The student should discuss the problem with the person who is responsible for what the student believes to be a violation of the Code of Student Conduct.

Level II - School Principal: If the problem has not been resolved at the informal level, the parent and/or student should discuss it with the principal or the

principals designate within five school days of the Level I discussion.

Level III - Superintendent's Office: If the problem has not been resolved at Level II, the parent and/or student may within ten (10) school days, present the grievance to the Superintendent or designee. The student and principal will submit summary positions to the Superintendent. The Superintendent or designee will respond to both parties within fifteen (15) school days after receiving the written statements.

Level IV - School Board: If the problem has not been resolved at Level III, the parent and/or student may request, in writing, a meeting with a Committee of the Board of School Directors. The student, principal, and Superintendent will submit summary positions to this School Board Committee. The Committee of the School Board will respond to all parties by arranging a meeting within fifteen (15) days of the written request.

SECTION FOUR

In This Section You Will Find:

- Exclusion from School.
- Procedures for Suspensions (Exclusions from school).
- Procedures for Expulsion.
- Procedures for Hearings.

Exclusions From School

Suspension, which is a function of the school administrators, and expulsion, which is a function of the board of directors, are serious disciplinary sanctions which may be imposed against students under procedures conforming with due process of law. Suspensions may be either in school or out-of-school. The administration will determine which is best for not only the student but also the rest of the student body.

Students are not permitted to attend school activities (co-curricular or extra-curricular) during their term of ISS/OSS. Students serving OSS are not permitted on school district property.

Procedures for Suspension (Exclusion from school)

The principal or teacher in charge of a public school may suspend any pupil for disobedience or misconduct for a period of one (1) to ten (10) consecutive school days and shall report to the suspension to the Superintendent as soon as possible thereafter.

No student may be suspended without notice of the reasons for which he/she is suspended. The student and parent(s)/guardian will be given the opportunity for an informal hearing with the designated school official.

A student may be suspended up to ten (10) school days following a hearing by the principal or designee.

No student may receive an in-school suspension without notice for which she/he is suspended and an opportunity to be heard prior to the time the suspension becomes effective. The parent(s)/guardian shall be informed of the suspension action taken by the school.

Should the in-school suspension exceed ten (10) consecutive school days, the student and his/her parent(s)/guardian shall be offered an informal hearing with the designated school official. Such hearing shall take place prior to the 11th day of the school suspension.

PROCEDURES FOR EXPULSION

The Board may either expel for a period exceeding ten (10) school days or may permanently expel from the rolls of this district any student whose misconduct and disobedience is such as to warrant this sanction. No student shall be expelled without an opportunity for a formal hearing before the Board of School Directors.

The student under 17 years of age who is expelled forfeits his/her right to an education in the school of this district, but has not been excused from compliance with the compulsory attendance statutes.

Parents or guardians who are unable to provide an education for their child shall submit a written statement within thirty (30) days that they are unable to do so. The district shall then make provisions for the student's education. If thirty (30) days pass without satisfactory evidence that the required education is being provided to the student, the district shall re-contact the parent and make provisions for the student's education. The Board shall continue to be responsible for the education of the student expelled, and shall provide an alternate education for any student suspended for more than ten (10) days.

PROCEDURE FOR HEARINGS

Education is a statutory right, and students must be afforded all appropriate elements of due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing, which is a fundamental element of due process.

A formal hearing is required in all expulsion actions. This hearing may be held before the Board of School Directors or a duly authorized committee of the Board, or a qualified hearing examiner appointed by the Board. When the hearing is conducted by a committee of the Board or a hearing examiner, a majority vote of the entire School Board is required to expel a student.

The purpose of the informal hearing is to enable the student to meet with the appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended.

From: James S. McGonigle
Sent: Thursday, March 22, 2007 9:39 AM
To: bmms_staff
Subject: Out of school suspension

Jill Snyder and Kristina Lehman have been suspended for 10 days beginning today. Michelle will be in contact with you regarding their work.

JIM

EXHIBIT K

EXHIBIT K

Page 2

1 APPEARANCES:

2

3 AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
BY: MARY CATHERINE ROPER, ESQUIRE

4 The Bourse Building
111 South Independence Mall
5 P.O. Box 40008
Philadelphia, Pennsylvania 19106
6 (215) 592-1513
Attorneys for Plaintiffs

7

8

SWEET, STEVENS, KATZ & WILLIAMS, LLP
9 BY: JONATHAN P. RIBA, ESQUIRE
331 East Butler Avenue
10 P.O. Box 5069
New Britain, Pennsylvania 18901
11 (215) 345-9111
Attorneys for Defendants

12

13 ALSO PRESENT:

14 Deborah Gordon Kiehr, Esquire
15 Meredith W. Nissen, Esquire
Mary E. Kohart, Esquire
16 Terry Snyder
17 ***

18

19

20

21

22

23

24

Page 4

1

2 INDEX

3 WITNESS:

4 Dr. Joyce Romberger

5

6 EXAMINATION	PAGE
7 By Ms. Roper	5, 75
8 By Mr. Riba	70
9 ***	

10

11 INDEX TO EXHIBITS

12

13 NUMBER	DESCRIPTION	PAGE
14 1	March of 2007 Blue Mountain School District calendar page	29
15		
16		
17 ***		

18

19

20

21

22

23

24

Page 3

1 DEPOSITION SUPPORT INDEX

2

3

4 DIRECTIONS NOT TO ANSWER:

5 PAGES: None

6

7

8 REQUESTS FOR DOCUMENTS OR INFORMATION

9 PAGES: None

10

11

12 STIPULATIONS AND/OR STATEMENTS:

13 PAGE: 5

14

15

16 MARKED QUESTIONS:

17 PAGES: None

18

19

20

21

22

23

24

Page 5

1 (By agreement of Counsel, all

2 objections, except to the form of the

3 question, are reserved to the time of

4 trial.)

5

6 DR. JOYCE ROMBERGER, after having been

7 first duly sworn, was examined and

8 testified as follows:

9

10 EXAMINATION

11

12 BY MS. ROPER:

13 Q. Good morning, Dr. Romberger.

14 A. Good morning.

15 Q. My name is Mary Catherine Roper. We've

16 met before. I'm a lawyer for the Plaintiffs in

17 this matter. Before we get started, we'll do a

18 little bit of introductory stuff.

19 Have you ever given a deposition before?

20 A. Yes. I have given testimony at a

21 hearing.

22 Q. And you've watched depositions,

23 correct?

24 A. Yes.

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1 **Q.** For the record, we always go over the
 2 ground rules to begin with. You know that I'll be
 3 asking you questions and you'll be answering them.
 4 There's no reason for you to answer a question
 5 unless you understand it. So please ask me to
 6 clarify any question that you find confusing or
 7 otherwise difficult to understand. Okay?
 8 A. Yes.
 9 **Q.** Then we have some rules that are just
 10 designed to make it easier for the Court Report and
 11 easier for us to read the transcript later.
 12 The first, of course, is that you must
 13 answer with words and not with uh-huh or with a
 14 shake or a nod of head. Okay?
 15 A. Yes.
 16 **Q.** Another rule is that, sometimes what
 17 I'm going to be asking is going to be painfully
 18 obvious and, in a normal conversation, you might
 19 interrupt me to give me an answer, but, because the
 20 Court Reporter can't take down two people speaking
 21 at once, you need to let me finish my boring and
 22 obvious question before you give an answer. Okay?
 23 A. Yes.
 24 **Q.** Great. This isn't an endurance test,

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1 November of 2006 through January 31st of 2007, and,
 2 on February 1st of 2007, I became the
 3 Superintendent.
 4 **Q.** Congratulations.
 5 A. Thank you.
 6 **Q.** And what was your position before you
 7 were Acting Superintendent?
 8 A. Assistant Superintendent for Curriculum
 9 and Instruction.
 10 **Q.** Before you were Assistant
 11 Superintendent, what was your position?
 12 A. Supervisor of Curriculum and
 13 Instruction, K through 12.
 14 **Q.** And what was the period of time you
 15 held that job?
 16 A. I held that from 1992, '93 through
 17 July 1st of 2005.
 18 **Q.** Did you hold a position at Blue
 19 Mountain before that?
 20 A. I did. Supervisor of Elementary
 21 Education.
 22 **Q.** How long were you in that position?
 23 A. From 1989 to, again, 1992, '93.
 24 **Q.** And what about before that?

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1 if you want to take a break, go to the bathroom,
 2 get some more water, confirm something with your
 3 attorney, you can do any of those things. The one
 4 thing that I would ask is that, if I've asked you a
 5 question, that you do your best to answer it and
 6 then ask for your break. Okay?
 7 A. Yes.
 8 **Q.** And the one exception to that would be,
 9 if I ask you a question that has anything to do
 10 with -- your concern is that it would require you
 11 to give information about conversations you've had
 12 with your attorney. I'm not asking for any
 13 conversation you've had with your attorney.
 14 Certainly, you can consult with your attorney to
 15 make sure that you don't violate that confidence.
 16 Okay?
 17 A. Yes.
 18 **Q.** Could you start by telling me your
 19 current position?
 20 A. I am the Superintendent of Blue
 21 Mountain School District.
 22 **Q.** And how long have you been
 23 Superintendent of Blue Mountain School District?
 24 A. I was Acting Superintendent from

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1 A. I was an Elementary Principal in a
 2 different school district, in Pine Brook School
 3 District, from 1985 to 1989.
 4 **Q.** In your current position as
 5 Superintendent of the school district, what are
 6 your responsibilities with respect to student
 7 discipline?
 8 A. I only deal with student disciplinary
 9 issues that are brought to my attention by other
 10 Administrators in the district or by phone calls
 11 from parents or outside agencies, but the building
 12 Principals are the ones who deal with the
 13 discipline.
 14 **Q.** And would that have been the same thing
 15 when you were Acting Superintendent?
 16 A. Correct.
 17 **Q.** And what about as Assistant
 18 Superintendent?
 19 A. Some situations would have come to my
 20 attention and other situations would have gone to
 21 the Superintendent, who, at that time, would have
 22 been dependant on who was the Superintendent.
 23 **Q.** Sure. And when you were Supervisor,
 24 and I don't remember the exact title, from 1992 to

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1 **2005, did you have any responsibilities with**
 2 **respect to discipline at that time?**
 3 A. I was a Supervisor of Curriculum and
 4 Instruction, K through 12. So sometimes Principals
 5 would call me for my opinion on an issue, if they
 6 didn't want to go straight to the Superintendent.
 7 I was also the Title 9 Coordinator, at
 8 that time, and also if there were any issues of
 9 sexual harassment on the part of a student or
 10 others, I was the person to whom those referrals
 11 were made. So if it had been of that nature, I
 12 would have been contacted or at the same time as
 13 the Superintendent.
 14 **Q. Now, if a building Principal or other**
 15 **Administrator brings a discipline matter to your**
 16 **attention, what is your role; what are your**
 17 **responsibilities with respect to that matter?**
 18 A. If the Principal or the Administrator
 19 feels it is of such a nature, sometimes they call
 20 me just to inform me of what has happened in their
 21 building and what they've done with that situation
 22 and they just call me to inform me because
 23 sometimes I need to share some of that information
 24 with the School Board because there may be concerns

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1 in the community and I give them the information
 2 first. I don't give out students' names.
 3 I just tell them, we had an incident in a certain
 4 school and this is what happened and this is what
 5 really happened, in case you hear rumors. That is
 6 one thing where I am just receiving the
 7 information.
 8 The other thing that may happen,
 9 depending on the nature of the disciplinary action,
 10 a Principal may just call to tell me the incident,
 11 tell me what they've done and just to have their
 12 affirmation of what they've done or just to ask my
 13 opinion. To ask my opinion is in terms of, do I
 14 think what they're suggesting is appropriate or is
 15 there some other avenue that perhaps we're going to
 16 pursue.
 17 **Q. And what about when a parent brings a**
 18 **disciplinary matter to your attention, what is your**
 19 **role; what is your response then?**
 20 A. Depending, again, on the nature of the
 21 parent's phone call to me, I will generally ask
 22 that parent if they've contacted the Principal.
 23 Depending on the nature, if it's a bus incident or
 24 something fairly minor, I will tell them that they

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1 need to first speak to the Principal. Depending on
 2 the seriousness of the allegation from the parent,
 3 it may be that I go directly to the Principal to
 4 discuss the situation.
 5 **Q. And in that instance, would you ever**
 6 **overrule the Principal or tell the Principal to**
 7 **change the discipline or rescind the discipline?**
 8 A. I have the authority to do that.
 9 **Q. Have you ever done that?**
 10 A. Have I ever directed the Principal to
 11 change something -- do you mean, have I dictated to
 12 the Principal to change something?
 13 **Q. To change a discipline that has been**
 14 **imposed, yes, that's the question.**
 15 A. No. I have sometimes counseled
 16 Principals as to other avenues to pursue, but I
 17 have never said to a Principal, this is not the
 18 correct action. This is what has to be done, not
 19 since February and since I've been in the
 20 Superintendent's job.
 21 **Q. What about as Acting Superintendent?**
 22 A. No. Because while I might Counsel
 23 them, I was not -- they have the right to go over
 24 my head to the Superintendent.

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1 **Q. When you were Acting Superintendent?**
 2 A. I'm sorry. I was thinking Assistant
 3 Superintendent. When I was Acting Superintendent,
 4 I did have that authority. No. To be honest, I do
 5 not recall any situations really coming to my
 6 attention that were of a serious nature.
 7 We had one bus complaint. I had some
 8 issues where maybe someone was concerned about
 9 situations with their children in the school, but
 10 it was always resolved because parents also have
 11 the right to go over, if they don't like my
 12 decision, to go to a School Board member and that
 13 has not happened to my knowledge.
 14 **Q. Okay.**
 15 A. I would also like to add, you had asked
 16 me prior to me being the Acting Superintendent,
 17 there was a time period, in 2001, when I was also
 18 Acting Superintendent for a period of five months
 19 and, at that time, I don't recall my having to
 20 dictate to a Principal that their decision was not
 21 the correct decision and something else should be
 22 done.
 23 **Q. I'm going to try to remember to say so,**
 24 **but my questions are about your role as**

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1 **Superintendent. So when I asked you those**
 2 **questions, I would like you to answer me for both**
 3 **the period of time when you are actually**
 4 **Superintendent and for any period of time that you**
 5 **were Acting Superintendent. Okay?**
 6 A. I will.
 7 **Q. Because what I'm really asking about is**
 8 **the point at which you are the highest**
 9 **administrative decision maker in the school**
 10 **district.**
 11 A. Okay.
 12 **Q. And that's what you are as either the**
 13 **Superintendent or the Acting Superintendent,**
 14 **correct?**
 15 A. Correct.
 16 **Q. Now, as either Superintendent or Acting**
 17 **Superintendent, what is your role and what are your**
 18 **responsibilities if you were to hear any accusation**
 19 **against a teacher about inappropriate conduct with**
 20 **students?**
 21 A. You're asking about a teacher?
 22 **Q. Yes.**
 23 A. If something came to -- if some
 24 information was shared with me that there was

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1 inappropriate conduct with a teacher, I would
 2 immediately contact the Principal of that school
 3 and I would share the allegation. Now, I would
 4 make sure that when I was contacted -- did you say
 5 whom I was contacted by?
 6 **Q. I didn't. If you want to go ahead and**
 7 **break down your answer in terms of who, that's**
 8 **fine.**
 9 A. If I had a phone call from a parent or
 10 -- if I had a phone call from a parent stating that
 11 a teacher had done something inappropriate, I would
 12 contact the Principal -- first, I would make sure
 13 from the parent that I had all the information as
 14 to the incident, what the inappropriate behavior
 15 was, talk to the Principal and I would ask to have
 16 a meeting with the Principal, the teacher and a
 17 union representative to discuss the issues.
 18 If the information that was given to me
 19 was in such a manner that I believe other students
 20 might know about whatever the incident was, I would
 21 have the Principal independently speak to those
 22 students. I would have someone within the school
 23 with whom the children were comfortable speaking
 24 to, the students. I would also ask the Principal

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1 to either have his or her Assistant Principal with
 2 them and, if there's no Assistant Principal in the
 3 building, to have another Administrator present
 4 and/or have a Guidance Counselor present.
 5 **Q. And the purpose of that meeting would**
 6 **be what?**
 7 A. The meeting with the students?
 8 **Q. With the students, yes.**
 9 A. To see if they have any information as
 10 to the accuracy of the charge.
 11 **Q. Could you give me an example of what an**
 12 **allegation might be?**
 13 A. Sure.
 14 **Q. Let's start with a parent. If a parent**
 15 **called you and said a teacher had had some sort of**
 16 **a sexual relationship with a student, what would**
 17 **you do under those circumstances?**
 18 A. I would speak to the Principal about
 19 the allegation. If it's that specific, I
 20 personally, in terms of a sexual allegation, I
 21 personally would probably interview the student too
 22 with either the Principal present or with a
 23 Guidance Counselor present. That's a very serious
 24 allegation because that allegation means, if it's a

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1 founded situation, that that teacher would come
 2 before the School Board possibly for disciplinary
 3 action and, if it's founded, that teacher could
 4 then lose their certification through the
 5 Department of Education and we would have to file a
 6 suit with the Department of Education for that
 7 professional Administrator to lose their
 8 certification in the State of Pennsylvania.
 9 It also means, depending on the age of
 10 the child, that there may be unlawful conduct being
 11 done and it may involved the police and referring
 12 that situation to the police. So, in that
 13 situation, I would speak to the student.
 14 **Q. And in fact, would you be subject to**
 15 **mandatory child abuse reporting laws with respect**
 16 **to, in some circumstances, with respect to sexual**
 17 **conduct between a teacher and a student?**
 18 A. Yes. The school district is a mandated
 19 reporter. Generally, it is the building Principal
 20 who is the mandated reporter.
 21 **Q. Okay. And under what circumstances is**
 22 **that report mandated?**
 23 A. If the school district hears of
 24 allegations and we believe that there is some

Page 18

1 validity to it. Now, when I say we believe there
 2 is some validity to it, we could have two students
 3 tell us that they've heard the rumor and, again, if
 4 we find that there's probably some cause to it, we
 5 report it. We are not required -- I take that
 6 back. I'm thinking of a kindergarten child. If a
 7 kindergarten child said something has occurred, we
 8 might do more investigation and just automatically
 9 call children in.

10 **Q. Why is that?**

11 A. Because we look at the age of the
 12 children and the adults that work with that child
 13 determine if this is something which should be
 14 reported or not reported. We are mandated
 15 reporters.

16 Let me give you another example. If we
 17 have a child who comes to school with a black and
 18 blue mark on her face and if the child tells us
 19 their parent hit them, we will report it. If a
 20 child says, I was out playing in the snow and I got
 21 hit with a snowball and we find out from another
 22 child that they were out playing in the snow, we
 23 will not report it.

24 **Q. But in terms of an allegation of sexual**

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1 **conduct, is it fair to say that your understanding**
 2 **of your obligation is that you must report any**
 3 **credible allegation of sexual contact between a**
 4 **teacher and a student?**

5 A. Yes.

6 **Q. But you are not required to report any**
 7 **allegation that you don't find credible for**
 8 **whatever reason?**

9 A. Correct.

10 **Q. And would you follow any different**
 11 **procedure if the accusation that came to you came**
 12 **directly from a student rather than through a**
 13 **parent?**

14 A. I have had no cases where students have
 15 contacted me directly. Generally, the students go
 16 to their Guidance Counselor or to their Principal
 17 to share that information. That information would
 18 come to me via a Principal because, even if it's
 19 shared with a Guidance Counselor, it would go to
 20 the building Principal and then it would come to
 21 me.

22 **Q. So I had asked you what procedure you**
 23 **would follow if a parent made an allegation to you**
 24 **of sexual contact. What procedure would you follow**

Page 20

1 **if a Principal made a report to you about such an**
 2 **allegation?**

3 A. The Principal would do the
 4 investigating with the children and check with
 5 other children, talk to other children in the
 6 school, if there are other children who may have
 7 information regarding the situation, and that
 8 information would be shared with me.

9 **Q. And would you question the Principal to**
 10 **make sure that he or she had done a full**
 11 **investigation?**

12 A. Yes.

13 **Q. Now, these questions have all been**
 14 **about an allegation of conduct between a teacher**
 15 **and a student.**

16 **What would be your role and your**
 17 **procedure if you received an allegation about a**
 18 **Principal having sexual contact with a student?**

19 A. Are you asking from a parent; what is
 20 the source?

21 **Q. From a parent or a student -- I guess,**
 22 **if it's different, let's start with a parent.**

23 A. If a parent called me, depending on the
 24 nature of the allegation of a sexual nature, it

Page 21

1 would be dependant on the information the parent
 2 gives me. Generally speaking, I would take the
 3 information. If there's some research and there's
 4 some information I can gather, outside of speaking
 5 to the Principal, if there are avenues within the
 6 school district that I can find out if it's true or
 7 not, I would investigate first before speaking to
 8 the Principal. However, I would speak to the
 9 Principal.

10 To be more specific, if that allegation
 11 is about the Principal and a teacher, I might speak
 12 to the teacher first before speaking to the
 13 Principal.

14 If it's an allegation of the Principal
 15 doing something sexually inappropriate to the
 16 teacher, I'd speak to the teacher first.

17 If it's the Principal having done
 18 something inappropriate with a parent, it would be
 19 another situation.

20 Did you ask me if it was a Principal
 21 and a student?

22 **Q. I just wanted to ask you about a**
 23 **Principal and a student.**

24 A. Okay. Then I would speak to the

Page 22

1 Principal first.

2 **Q. If you had been given information that**

3 **suggests that other people had information, would**

4 **you follow-up with them as well?**

5 A. Within the school?

6 **Q. Yes. Let's start with within the**

7 **school.**

8 A. It would depend on the situation.

9 **Q. What would be -- when you say you would**

10 **speak to the Principal first, what would be the**

11 **purpose of that conversation with the Principal?**

12 A. Remind me, how did I find this out?

13 **Q. A parent contacts you and makes an**

14 **allegation about a Principal having sexual contact**

15 **with a student?**

16 A. I would sit down with the Principal and

17 inform that Principal that I've had an allegation

18 against that person and discuss it.

19 **Q. And would the purpose of that**

20 **conversation be to determine whether or not it was**

21 **a credible allegation?**

22 A. No. It would be to inform the

23 Principal. Then, during the discussion, to find

24 out if there may be some validity to it.

Page 23

1 **Q. Would you take other steps to determine**

2 **whether this was a credible allegation?**

3 A. It would be dependant on what my

4 conversation is with that Principal.

5 **Q. What would determine whether or not you**

6 **would investigate further to see whether the**

7 **allegation against the Principal was a credible**

8 **one?**

9 A. I can only speak generally. If you

10 give me specifics, I could answer that more

11 clearly. I can't answer that without having

12 specifics.

13 **Q. Okay. Is it fair to say that you would**

14 **take whatever steps you needed to come to a**

15 **conclusion in your mind as to whether or not the**

16 **allegation was credible?**

17 A. Absolutely. I would not just take the

18 word of a Principal. I would investigate.

19 **Q. Okay. Would that investigation include**

20 **either you or someone else speaking to the student**

21 **that is allegedly involved?**

22 A. Yes. It could even be the Principal.

23 **Q. You would ask the Principal to speak to**

24 **a student who was making an accusation that the**

Page 24

1 **Principal had inappropriate contact with that**

2 **student?**

3 A. Perhaps not alone, but the Principal

4 could be there.

5 **Q. If you concluded that an accusation of**

6 **a Principal having sexual contact with a student**

7 **was credible, not necessarily true, but, at least**

8 **credible, what would your next step be; what would**

9 **you be obligated to do?**

10 A. To report it to -- well, actually,

11 there would likely be a disciplinary action in the

12 school district.

13 When I was answering your question, I

14 was not thinking of a sexual allegation from a

15 student against the Principal. If there's an

16 allegation of a student against a Principal, I

17 would inform the Principal that an allegation had

18 been made, but I would investigate that through

19 other avenues, which could include the Guidance

20 Counselor. I do not believe a student would call

21 me directly to me inform me.

22 Are we still on a student informing me

23 or are we back to a parent informing me?

24 **Q. We were back to the parent informing**

Page 25

1 you.

2 A. I'm sorry, you're meandering.

3 **Q. Okay. Let me clarify. I'm assuming**

4 **that an allegation of this nature would be a report**

5 **by a student probably to a parent and then coming**

6 **to you. So that's the scenario that I'm talking**

7 **about here. Now, if you want to clarify anything**

8 **you've told me about what you would do upon**

9 **receiving that report from a parent, go ahead.**

10 A. Okay. And I would not automatically

11 assume it would come from a parent. It could come

12 from a student talking to a school Counselor, which

13 is why I'm giving you different answers.

14 **Q. Okay. Then let's start with the parent**

15 **and then I'll ask you to tell me about the school**

16 **Counselor.**

17 A. Okay. If a parent informs -- has an

18 allegation against any -- is it a Principal?

19 **Q. It's a Principal at this point.**

20 A. If a parent calls me, then I would

21 investigate. I would probably contact the Guidance

22 Department to see if the student had given them any

23 information. I would investigate with the student

24 or I would have an Assistant Principal investigate

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1 with the student, if there's an Assistant in the
 2 building. So between the Guidance Counselor and
 3 the Assistant Principal, I would investigate.
 4 Again, this is after I have informed the Principal
 5 of the allegation.
 6 And then, at some point, depending on
 7 the information I have gleaned, I may or may not
 8 meet with the student to determine if it's true.
 9 In any event, I would speak with the parent again.
 10 **Q. Now, what if this allegation came to**
 11 **you through a Guidance Counselor or another member**
 12 **of the administration?**
 13 A. If it came to me that way, again, they
 14 would have facts. Again, depending on which
 15 Administrator -- if, again, you're saying the
 16 Principal, then I would ask if they've spoken to
 17 the Assistant Principal, what information they've
 18 gathered. If I read the information, or as I go
 19 through the discussion, I decide, if there's
 20 adequate information there, that I might meet with
 21 the student or I might not.
 22 One of the things we do is, when
 23 students have concerns and they meet with a
 24 Guidance Counselor or an Administrator, we

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1 generally have them write out what the incident is
 2 and we have them sign it.
 3 **Q. I want to try to capture something that**
 4 **you said in one summarizing statement. If this is**
 5 **not accurate, please tell me. My understanding,**
 6 **from your testimony, is that while you've laid out**
 7 **a number of steps you might take, you would not**
 8 **pursue any more of those steps than you needed to**
 9 **pursue to determine whether or not the allegation**
 10 **is credible; is that correct?**
 11 A. No. It's not that I wouldn't pursue
 12 any more than I needed. I would pursue steps until
 13 I feel I have information regarding the situation.
 14 I don't want to give the impression that I'm just
 15 going to speak to the Principal and it ends there.
 16 I would keep investigating until I feel I have
 17 enough information to make a decision.
 18 **Q. And what if, upon speaking to the**
 19 **Principal, you believe that you had enough**
 20 **information to determine that this was just not a**
 21 **credible allegation?**
 22 A. Again, not taking lightly the research
 23 that I had done, if it's not a credible allegation,
 24 then -- again, we're talking about a student making

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1 a referral?
 2 **Q. Yes.**
 3 A. Then I would go back to the Guidance
 4 people or have administration and Guidance speak
 5 together and talk to the student as to what the
 6 next step would be, whether we're going to -- let
 7 me backup. We would also have the parent involved
 8 in this process. It wouldn't be just the student
 9 we were dealing with. We would investigate until
 10 we feel we have the information we need.
 11 **Q. Thank you. I know that these are a lot**
 12 **of hypothetical questions.**
 13 A. Hypotheticals are difficult questions.
 14 Specifics are much easier to deal with.
 15 **Q. I understand. Now, we've just**
 16 **characterized these questions as hypotheticals, but**
 17 **without giving any sort of specifics, have you, in**
 18 **fact, had to pursue some of these procedures at any**
 19 **point while you were Superintendent or Acting**
 20 **Superintendent because of an accusation against a**
 21 **teacher or a Principal?**
 22 A. I have, and I have done that since
 23 February in a case other than this.
 24 **Q. Dr. Romberger, you are, of course,**

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1 **familiar with the case that we're here to talk**
 2 **about?**
 3 A. I am.
 4 **Q. I see you have a page from your**
 5 **calendar in front of you. Can you tell me what**
 6 **that is?**
 7 A. I'll be happy to share it with you.
 8 **Q. Thank you.**
 9 MR. RIBA: Do you want to mark that as
 10 an exhibit?
 11 MS. ROPER: Yes.
 12 (Plaintiff's Romberger Exhibit 1, March
 13 of 2007 Blue Mountain School District
 14 calendar page, was marked for
 15 identification.)
 16 **Q. Dr. Romberger, could you explain for me**
 17 **what we have marked as Romberger Exhibit 1?**
 18 A. Yes. This is a copy of the March 2007
 19 Blue Mountain calendar and I marked on here the
 20 date of March 21st, when Mr. McGonigle came to me
 21 for the first time to inform me of the incident
 22 we'll be discussing today, that Jill Snyder was
 23 involved in the MySpace page.
 24 Thursday, March 22nd is when

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1 Mr. McGonigle met with the parents.
 2 The following week, March 28th, is when
 3 I was informed that a Temporary Restraining Order
 4 was filed with the Federal Court.
 5 March 29th is the day I went to
 6 Scranton to the Federal Court.
 7 I want to have the exact dates in front
 8 of me rather than discussing just a Wednesday or a
 9 Thursday.
 10 **Q. This is very helpful. Thank you for**
 11 **doing that. It makes things much easier.**
 12 **Was March 21st the first day that you**
 13 **heard that there was a MySpace page about Principal**
 14 **McGonigle?**
 15 A. Yes.
 16 **Q. Can you tell me how you learned of**
 17 **that?**
 18 A. Yes. I was in a meeting with my
 19 Technology Coordinator, in the morning, and
 20 Mr. McGonigle came into that meeting and shared
 21 with the two of us a copy of --
 22 MS. ROPER: Let's go off the record for
 23 a second.
 24 (A discussion was held off the record

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1 and, at this time, Mary E. Kohart, Esq.
 2 entered the deposition room.)
 3 A. I was in a meeting with my Technology
 4 Coordinator, Susan Snyder Morgan, and Mr. McGonigle
 5 came into the meeting and said he had something he
 6 needed to show us. He showed us the MySpace -- he
 7 showed us a page from MySpace.
 8 **Q. And what did he tell you?**
 9 A. He told us, as I recall, that one of
 10 the students in the middle school had put the
 11 MySpace account on the Internet.
 12 **Q. And what time of day was this meeting?**
 13 A. It was in the morning, somewhere
 14 between nine and eleven.
 15 **Q. Did Mr. McGonigle tell you how he had**
 16 **learned of the MySpace page?**
 17 A. He said students had informed him of
 18 it.
 19 **Q. Did he tell you how he had gotten a**
 20 **copy of it?**
 21 A. I believe he said a student gave him a
 22 copy.
 23 **Q. Did he say what student?**
 24 A. No; a middle school student.

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1 **Q. Okay. Did he show you the page?**
 2 A. Yes.
 3 **Q. Was he making a request of you**
 4 **regarding the page or just informing you; what was**
 5 **the content of the discussion?**
 6 A. I believe he told us he was informing
 7 us, but he was also investigating the case.
 8 **Q. What do you mean investigating?**
 9 A. Trying to gather information as to who
 10 the student was who had the account out. I don't
 11 recall the exact details.
 12 **Q. At that point, to your recollection,**
 13 **did he have the name or names of the students he**
 14 **believed to have been involved?**
 15 A. I do not recall him mentioning names at
 16 that point.
 17 **Q. Did he ask you to do anything?**
 18 A. No.
 19 **Q. Did he ask Ms. Snyder Morgan to do**
 20 **anything?**
 21 A. I don't recall.
 22 **Q. How long did this discussion last?**
 23 A. Maybe 10 minutes. I looked --
 24 maybe 10 minutes.

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1 **Q. How do you know it was 10 minutes?**
 2 A. It was, approximately, 10 or 15
 3 minutes. I looked at the MySpace. I read it. I
 4 saw his photograph. It said Principal. I read
 5 what was on the paper. Mrs. Snyder Morgan read
 6 what was on the paper. We realized it was a
 7 photograph from our website. We realized the fact
 8 that he was a Principal. It was true. There were
 9 other allegations on the paper. We did not discuss
 10 if they were true or not true and we discussed that
 11 it was a violation of our A-U-P policy, our
 12 Acceptable Use Policy.
 13 **Q. What is the Acceptable Use Policy?**
 14 A. We have an Acceptable Use Policy that
 15 is Board approved. I don't know the exact number.
 16 I believe it's in the 800's and it is a policy that
 17 governs our students, our facility, our custodians,
 18 anyone, School Board members, anyone who uses
 19 computers, Internet, I believe cell phones may even
 20 be on that, in terms of what is acceptable use for
 21 that electronic and communication system regarding
 22 our school district or associated with our school
 23 district.
 24 **Q. And why did you believe that this was a**

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1 **violation of the Acceptable Use Policy?**
2 A. Because Mr. McGonigle's photograph was
3 from our website. I recall Mrs. Snyder Morgan
4 saying that the photograph that was on the MySpace
5 looked like the one that was on our website and I
6 remember her checking and it was on our website.
7 **Q. And why would that be a violation of**
8 **the Acceptable Use Policy?**
9 A. Copyright.
10 **Q. Can you explain that answer?**
11 A. Yes. One of the things -- we have an
12 Acceptable Use Policy, which we do discuss with our
13 students. We discuss with students that they
14 cannot get copyrighted material without permission
15 from the agency or the website, that they cannot
16 use plagiarized writings from websites, books,
17 copyright, etcetera, any textbook, any printed
18 material, and that is information we repeatedly
19 discuss with our students and we're teaching in our
20 schools and the fact that this was something that
21 was on our website and taken from our website, we
22 believe it's a violation of our Acceptable Use
23 Policy.
24 **Q. Because it violates a copyright; is**

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1 **that what you mean?**
2 A. Because it's on our website and copied
3 from our website and it was used without our
4 permission.
5 **Q. Does the school have a copyright on the**
6 **photograph?**
7 A. We have sole permission to use it. We
8 were not asked by -- at that point, I didn't know
9 who the student was, but I had no knowledge that
10 anyone had been given permission to copy that
11 photograph from our website. It's our website. We
12 created it.
13 **Q. Apart from the use of the photo, did**
14 **you believe that the MySpace page violated the**
15 **Acceptable Use Policy in any other way?**
16 A. No; not that I can think of or that I
17 recall us discussing.
18 **Q. Did you discuss any of the written**
19 **content of the website at that meeting?**
20 A. I don't recall us discussing the actual
21 words that were on the page, except, having read
22 it -- I don't remember us discussing the wording.
23 **Q. Now, when Mr. McGonigle brought this to**
24 **you, did he tell you it had been done by his**

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1 **student?**
2 A. As I recall, he said a student told him
3 it was done by a student, but I don't recall
4 exactly.
5 **Q. Okay. Did you, at any point, suspect**
6 **or worry or think that it had been done by someone**
7 **other than a student?**
8 A. No, because Mr. McGonigle was
9 investigating it.
10 **Q. And you said you read the content of**
11 **the MySpace page that morning, when you were first**
12 **given a copy. What was your reaction to the**
13 **content?**
14 A. Very inappropriate language.
15 **Q. What do you mean by that**
16 **specifically -- if you want me to narrow that down,**
17 **I can?**
18 A. Yes.
19 **Q. Are you talking about the use of**
20 **profanity on the website as being inappropriate**
21 **language?**
22 A. The comments that were made, that
23 Mr. McGonigle had sexual relation with students, I
24 think there were comments that he had inappropriate

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1 interactions with parents. I saw it, I guess, as
2 lies.
3 **Q. Did you have any other reaction?**
4 A. Disgust, if it was a student who had
5 done it.
6 **Q. Disgust because they had written those**
7 **things; is that what you mean?**
8 A. Right. If a student had written those
9 things, I thought it was very inappropriate for a
10 student and I was disgusted that one of our
11 students would do that.
12 **Q. After your conversation with**
13 **Mr. McGonigle, am I correct that that conversation**
14 **ended with him saying he was going to do further**
15 **investigation?**
16 A. That's what I recall.
17 **Q. Did you plan any personal investigation**
18 **as a follow-up to that meeting?**
19 A. No.
20 **Q. Did you direct or did you understand**
21 **that Ms. Snyder Morgan was going to do any**
22 **follow-up investigation as a result of that**
23 **meeting?**
24 A. As I recall, Mr. McGonigle and Ms.

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1 Snyder Morgan were working together through MySpace
 2 to see if they could determine who had done it. I
 3 know that they were discussing it as they were
 4 investigating.
 5 **Q. Was it your understanding that**
 6 **Ms. Snyder Morgan had known about it before that**
 7 **meeting?**
 8 A. My impression was she did not. My
 9 impression was that that was the first time we both
 10 found out about it.
 11 **Q. What was the next communication you had**
 12 **with anyone about the MySpace page?**
 13 A. I'm trying to remember. I can't recall
 14 if Mr. McGonigle, at that point, had told us who
 15 the students were whom he thought had done it. At
 16 some point, during that day or the next day, I was
 17 informed that it was no longer on MySpace and I
 18 know that Mr. McGonigle was going to be talking to
 19 the students. That's all I know, that that was the
 20 next step. Mr. McGonigle was investigating and he
 21 was going to be speaking to the students involved.
 22 **Q. And that was either later on the 21st**
 23 **or on the 22nd; is that correct?**
 24 A. Yes. My understanding is that he was

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1 investigating on the 21st. The next time I heard
 2 about it, I believe it was the morning of the 22nd
 3 and he informed me that he knew who the two
 4 students were and he was going to be talking to the
 5 parents.
 6 **Q. Did he tell you, at that point, if he**
 7 **had determined a discipline that he intended to**
 8 **impose?**
 9 A. By the 22nd, yes, he did.
 10 **Q. And what did he tell?**
 11 A. He was planning to give 10 days
 12 out-of-school suspension.
 13 **Q. And did you have any discussion with**
 14 **him about the appropriateness of that punishment?**
 15 A. I concurred.
 16 **Q. Why?**
 17 A. Well, because, first of all, a breach
 18 of our A-U-P policy can be anything from a
 19 disciplinary within the school to, actually,
 20 expulsion. He was going with a 10 day
 21 out-of-school suspension, all student work was
 22 allowed to be completed, and I felt it was
 23 appropriate.
 24 **Q. Why did you feel it was appropriate?**

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1 A. Because it was a violation of our A-U-P
 2 policy. I felt that the student had taken
 3 something from our Internet website that was
 4 inappropriate and the student, of course, had told
 5 lies about Mr. McGonigle.
 6 **Q. So in your mind then, the punishment**
 7 **was, in part, for the use of the photograph, but**
 8 **also for the content of the website?**
 9 MR. RIBA: Objection.
 10 **Q. You can answer that if you understand**
 11 **that.**
 12 A. I do understand the question. As I
 13 said, the A-U-P policy itself was everything from
 14 in school discipline to expulsion and, I believe,
 15 that was an issue and, I believe, in part, the lies
 16 that were involved and that was another issue I was
 17 very concerned about with this.
 18 When I talked to Mr. McGonigle on
 19 the 21st, as I recall now, he and Susan Snyder
 20 Morgan were discussing the fact that this was on
 21 the Internet and it was out there, I don't recall
 22 what period of time, but it was out there for the
 23 public and anyone had access to it. If you read
 24 the MySpace, it was an allegation against

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1 Mr. McGonigle of having sexual relations with
 2 students.
 3 I had heard, within the prior few
 4 months to this, I only heard of MySpace one time.
 5 The time I had heard of MySpace was either on the
 6 T-V news or it was in Time Magazine or one of the
 7 news magazines, and there was a photograph of a
 8 young man, who appeared to be nude, it was actually
 9 blacked out, and he was standing in front of a
 10 refrigerator holding a beer bottle and the comment
 11 was that employers are checking the Internet for
 12 information regarding students and what it was is
 13 that this student had not gotten a job because of
 14 this photograph on MySpace. Knowing the fact that
 15 school Administrators and teachers have to abide by
 16 the code of professional conduct, I also felt that
 17 the student, by what she had written and the fact
 18 that it was out there for the entire world to see
 19 for a certain period of time, had actually impugned
 20 his reputation. The fact that the code of
 21 professional conduct is something we have to abide
 22 by and the student had written these things and it
 23 was out there for anyone might also jeopardize his
 24 current position or possible future positions. So

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1 I also felt that lies were told and that was on
 2 the 21st.
 3 **Q. The MySpace page does not use**
 4 **Mr. McGonigle's name; is that correct?**
 5 A. I don't recall. I'd have to see the
 6 MySpace. I know it says Principal.
 7 **Q. Let me give you --**
 8 MS. ROPER: We'll just use the same
 9 designation, Defendant's Exhibit 1.
 10 MR. RIBA: Sure.
 11 **Q. This is a two page exhibit. The second**
 12 **page, which is blown up and easier to read, it's**
 13 **the same content I'll represent to you.**
 14 **Is it correct that Mr. McGonigle's name**
 15 **does not appear on this page anywhere?**
 16 A. It does not. It simply says Principal.
 17 **Q. It also does not identify him with Blue**
 18 **Mountain School District, correct?**
 19 A. I do not see Blue Mountain School
 20 District.
 21 **Q. Why do you say that you were concerned**
 22 **that this page could jeopardize his current**
 23 **position?**
 24 A. He informed me that students had come

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1 to him and told him that there was something on
 2 MySpace about him and there were terms in this that
 3 I -- there are statements on this page that if
 4 other students are reading it and they think he may
 5 have had anything to do with it or that someone
 6 else would write about him -- such as, fucking in
 7 my office, hitting the students -- or hitting on
 8 students. The fact that someone wrote this about
 9 him could even plant a seed that there may be some
 10 truth to it.
 11 **Q. But why would that jeopardize his**
 12 **position, his current position?**
 13 A. Because he has to enforce discipline
 14 and it doesn't allow students to use this kind of
 15 language. Now someone is using it about him.
 16 Children came to him and told him that -- the
 17 student who approached him about this and said that
 18 there was something about him on MySpace and, as I
 19 recall, the student said it was not very nice, I
 20 think that's what he told me at some point during
 21 the investigation. The fact that this is out there
 22 about him could cause children to look at him in a
 23 different manner. Someone might read something on
 24 here and possibly repeat it to him or view him in a

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1 different role, certainly, less than totally
 2 respectful.
 3 **Q. And why did you say that it could**
 4 **jeopardize his future employment?**
 5 A. There are people within our County and
 6 there are people within the State who do know
 7 Mr. McGonigle. They do know him by sight and the
 8 photograph alone would have been enough. They
 9 would have recognized his photograph on the page.
 10 **Q. What consequence did you think would**
 11 **follow from this?**
 12 A. The fact that it's out there, it could,
 13 number 1, the children would see that somebody did
 14 not respect him enough that they would chose to put
 15 something like this out on MySpace regarding him.
 16 Number 2, the fact that some might view
 17 him as not having discipline of his building
 18 enough. That children would chose to do something
 19 like this, that means that he may not be respected
 20 enough by his students.
 21 Number 3, people who might be
 22 considering him for employment, at some point,
 23 might find this or might just be aware of it.
 24 I do not know all the things that are

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1 out on the Internet, but I do know that if you put
 2 in different information you can find things now
 3 that you couldn't have found five years ago.
 4 **Q. With respect to people who may be**
 5 **considering Mr. McGonigle for future employment,**
 6 **what was your concern -- I assume that you're**
 7 **talking about being worried about what their**
 8 **reaction might be to seeing this page; is that**
 9 **correct?**
 10 A. Yes. Because someone who does not know
 11 Mr. McGonigle would not know if it was accurate or
 12 not accurate. Even if they think it's not
 13 accurate, they might question why anyone would even
 14 put this out about him and there might be a flaw in
 15 his character.
 16 Again, going back to the code of
 17 professional conduct, which is mandated by the
 18 Department of Education, and the comments that are
 19 in here are a violation if taken seriously.
 20 There's a saying, where there's smoke, there's
 21 fire, and some people believe that and if somebody
 22 reads this, they might think that there's something
 23 to it, some truth to it.
 24 **Q. You've now told me about a conversation**

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1 with Mr. McGonigle the morning of the 21st
 2 regarding this MySpace page and I think you said,
 3 later on the 21st, he told you that he had
 4 identified the students involved and had intended
 5 to discipline them?
 6 A. Right. I don't recall exactly if it
 7 was on the 21st or 22nd. I mean, he may have
 8 mentioned it the morning of the 21st, but I just
 9 don't recall.
 10 Q. But by the morning of the 22nd, you
 11 believe you had two conversations with
 12 Mr. McGonigle about this; is that correct?
 13 A. Yes. He told me what the discipline
 14 was going to be.
 15 Q. What was your next conversation with
 16 Mr. McGonigle about this?
 17 A. As I recall, it was after he met with
 18 the parents. He told me he had met with the
 19 parents.
 20 Q. And what did he tell you about that?
 21 A. That he had discussed the MySpace and
 22 told them what the discipline was going to be,
 23 the 10 day suspension.
 24 Q. What else did he tell you?

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1 A. As I recall, he said -- that's all I
 2 recall. I can't remember exactly.
 3 Q. Do you believe that conversation was
 4 sometime on the 22nd?
 5 A. I do.
 6 Q. When was your next conversation with
 7 Mr. McGonigle about this MySpace page?
 8 A. I don't recall specifics. I know we
 9 had numerous conversations between the 22nd and
 10 the 28th. At one point, I believe he told me that
 11 Mrs. Snyder Morgan did not agree with the
 12 punishment, but the specific details, I do not
 13 recall.
 14 Q. Did you have any further conversations
 15 with Ms. Snyder Morgan about this MySpace page
 16 after that first meeting?
 17 A. Yes. I know we had more conversations
 18 again, but it was in getting ready for the Court
 19 case on the 29th. Generally speaking, it was about
 20 the A-U-P policy, the photograph.
 21 Q. Please tell me the content of your
 22 conversations with Ms. Snyder Morgan before the
 23 Court hearing, excluding any conversations that
 24 included your Counsel?

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1 MR. RIBA: Do you understand that? If
 2 the attorney was there, don't share what was
 3 talked about during that conversation.
 4 THE WITNESS: Yes.
 5 MR. RIBA: If he wasn't there, go ahead
 6 and share.
 7 A. It involved the fact that I did not
 8 have the general knowledge of MySpace that our
 9 Technology Coordinator had. So it was -- some of
 10 that conversation was her informing me as to what
 11 MySpace is, who had access to MySpace. I learned
 12 that there was a time period it was open to anyone
 13 and there was a time period it was closed.
 14 We discussed the A-U-P policy.
 15 We discussed whether -- am I allowed to
 16 mention the children?
 17 Q. Yes.
 18 A. After I knew who the children were, I
 19 asked her to go back and check our records and see
 20 if the children had received an A-U-P, an
 21 Acceptable Use Policy, if the children had signed
 22 it, if the parents had signed it for both students,
 23 and they did.
 24 We discussed the curriculum in our

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1 school. They were both -- again, this is after
 2 the 21st. They were both 8th grade students. We
 3 discussed the fact that the Acceptable Use Policy
 4 is discussed in our middle school, in 8th grade, in
 5 the library research project the Acceptable Use
 6 Policy is reviewed, the copyright laws, the
 7 plagiarizing, and those things were discussed by
 8 the librarian.
 9 At some point, I asked her to go back
 10 and see, as we were preparing for the Temporary
 11 Restraining Order, if Jill Snyder had been in
 12 school and, because it was a rotation subject, if
 13 Jill Snyder had received that instruction and she
 14 had received it for the marking period before and
 15 had received a satisfactory grade in that,
 16 Acceptable Use Policy -- she had passed the course
 17 for the research project and that the Acceptable
 18 Use Policy and some of the content of that was
 19 discussed in class, which dealt with this
 20 photograph, which was taken off our website and put
 21 out on MySpace.
 22 MR. RIBA: Can we take a five minute
 23 break?
 24 MS. ROPER: Absolutely.

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1 (At this point, a recess was taken.)
 2 BY MS. ROPER:
 3 Q. Dr. Romberger, you were telling me the
 4 things that you and Ms. Snyder Morgan discussed
 5 between the time you learned of the MySpace account
 6 and the Court hearing in this case.
 7 Would you please continue with that
 8 description?
 9 A. Can you tell me specifically what I was
 10 saying?
 11 Q. Absolutely. You said you learned a bit
 12 about MySpace and how it works – and if you think
 13 my characterization of your testimony is
 14 inaccurate, please correct me. You learned
 15 something about when the profile was, as you said,
 16 open and when it was closed, that you and Ms.
 17 Snyder Morgan discussed the A-U-P policy and you
 18 confirmed that Jill Snyder had taken it and passed
 19 a class in which that policy was specifically
 20 discussed with 8th grade students. I think that's
 21 where you finished.
 22 Can you tell me anything else you
 23 discussed with Ms. Snyder Morgan outside the
 24 presence of your Counsel between the 21st and

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1 the 28th of March?
 2 A. I cannot remember. There were many
 3 discussions on these topics.
 4 Q. When you say there was a time when the
 5 profile was open and a time when the profile was
 6 closed, could you explain to me your understanding
 7 of what that means?
 8 A. My understanding is when it's open,
 9 anyone, anywhere has access to it. My
 10 understanding is when it was closed, that only
 11 people who know a specific U-R-L have access to it.
 12 Q. And when it is open, do you have any
 13 understanding of how someone could find the page?
 14 A. No.
 15 Q. When it is closed, did you understand
 16 that a person had to have permission in order to
 17 view the page?
 18 A. Permission would not be the word I
 19 would use. I believe they needed to have a
 20 specific address or some type of specific
 21 information to access it, but I don't know what
 22 that is called.
 23 Q. Now, I'm going to switch between
 24 discussions between you and Ms. Snyder Morgan to

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1 discussions between you and Mr. McGonigle that you
 2 have not previously discussed in this testimony and
 3 did not include your Counsel. You said there were
 4 a number of discussions. Could you tell me the
 5 content of those discussions?
 6 A. At some point, again, it may have been
 7 the 21st or the 22nd, he informed me of the
 8 students' names. He informed me of the discipline
 9 that he was going -- the disciplinary procedures he
 10 was going to use for the two students. They were
 11 both going to get exactly the same discipline. He
 12 informed me, I believe it was Mr. McGonigle who
 13 informed me, that the MySpace was opened, at one
 14 point, and it was closed at another and then, at
 15 some point, I was informed it was taken off
 16 MySpace. I believe that was Mr. McGonigle who told
 17 me that it was closed down.
 18 As I recall, I had also spoken to
 19 Mrs. Snyder. She had asked me to research
 20 Mr. McGonigle's decision. I shared with
 21 Mr. McGonigle that, after discussing it with
 22 Mrs. Snyder, that I was going to uphold the 10 day
 23 suspension. I also, during one of our discussions,
 24 I informed Mr. McGonigle that I had shared the

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1 incident and a copy of MySpace with the School
 2 Board.
 3 Q. Can you remember anything else that you
 4 and Mr. McGonigle talked about with respect to this
 5 MySpace page between March 21st and March 28th?
 6 A. It would have been getting things ready
 7 for the Federal case on the 29th, as to who was
 8 sending what to the attorney, information of that
 9 nature, who was driving to the hearing up in
 10 Scranton.
 11 Q. By the way, would you agree with me
 12 that a 10 day suspension is a very serious
 13 disciplinary measure?
 14 MR. RIBA: Objection to the form of the
 15 question. You can answer.
 16 A. It's serious, but we do make out 10 day
 17 suspensions.
 18 Q. But a 10 day suspension is the longest
 19 suspension the school district can give without
 20 expelling a student; is that right?
 21 A. I would have to check our official
 22 policy. I know we -- I would have to check the
 23 policy.
 24 Q. Are you aware of any instances in which

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1 the school district has suspended a student for
 2 longer than 10 days?
 3 A. At one time?
 4 Q. Yes.
 5 A. No. I would say though, the fact that
 6 this is a level four of the disciplinary code, that
 7 we have given other 10 day suspensions for a level
 8 four violation.
 9 Q. And a level four is your highest, most
 10 serious level of disciplinary infraction; is that
 11 correct?
 12 A. I would have to check. There may be a
 13 level five. I'm not sure.
 14 Q. But it's up there?
 15 A. It's up there. This was up there.
 16 Q. You mentioned that you shared the
 17 MySpace page and discussed it with the School
 18 Board. Can you tell me about those communications?
 19 A. They were in executive session.
 20 Am I allowed to discuss that with my
 21 Counsel?
 22 MR. RIBA: Can we confer on this?
 23 MS. ROPER: Go ahead.
 24 (At this point, a recess was taken.)

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1 MR. RIBA: I'm going to instruct my
 2 client not to answer on the basis of
 3 attorney client privilege. It was during a
 4 portion of the executive session during
 5 pending legal matters. Counsel was present.
 6 So I'm instructing my client not to answer
 7 that question.
 8 MS. ROPER: Okay.
 9 BY MS. ROPER:
 10 Q. Did you have any discussions about the
 11 MySpace page with any School Board members outside
 12 of that executive session that your Counsel has
 13 just talked about?
 14 A. They weren't discussions. I only
 15 informed the School Board when the Temporary
 16 Restraining Order was filed and I informed them
 17 that we were going to Court on the 29th. When we
 18 came back from Court, I informed them that we had
 19 been to Court and I informed them the student would
 20 serve her 10 day out-of-school suspension. Other
 21 than that, I have not.
 22 Q. You also mentioned speaking to Ms.
 23 Snyder about the suspension. Would you tell me
 24 about those discussions?

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1 A. I met with Mrs. Snyder and I was trying
 2 to recall, in the back of my mind -- I think she
 3 telephoned me and asked me to change the 10 day
 4 out-of-school suspension and, I believe, I told
 5 her, on the telephone, that I will not do that.
 6 However, she and I also did meet and I believe we
 7 met sometime during March 26th or the 27th. The
 8 reason I believe it was then is because she asked
 9 to meet with me to discuss the situation, again,
 10 hoping I would override Mr. McGonigle's discipline,
 11 or overrule, and I said I would not and, as I
 12 recall, she said that she was hoping she could
 13 resolve it once without having to go any farther
 14 with it. That's my recollection.
 15 Q. And when you say not go any farther
 16 with it, what was your understanding of that?
 17 A. My understanding was legal proceedings.
 18 She did not mention legal proceedings, but she
 19 implied that and then it was a day or two that I
 20 heard about the Temporary Restraining Order.
 21 Q. So you mentioned discussing this
 22 MySpace page with Ms. Snyder Morgan, Mr. McGonigle,
 23 the School Board, we won't delve any further into
 24 those discussions, and Mrs. Snyder. Is there

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1 anyone else that you showed the MySpace page to or
 2 discussed it with?
 3 A. Yes; Mrs. Lehman.
 4 Q. Can you tell me about those
 5 discussions?
 6 A. Yes. Mrs. Lehman also asked to meet
 7 with me. I don't have an exact date. It was
 8 sometime between March 23rd and the 30th, I
 9 believe. She asked to meet with me because she
 10 heard -- she had met with Mr. McGonigle and she was
 11 concerned about the statement on the conduct report
 12 about false accusations against Mr. McGonigle.
 13 Somewhere on his conduct form he must have wrote
 14 false accusations against the Principal or against
 15 Mr. McGonigle. She said, why was this, and she
 16 said, I know my daughter took the photograph, but I
 17 don't understand the false accusations. So I had a
 18 copy of the MySpace and took it and I read certain
 19 things from it. Do you want me to --
 20 Q. No. That's okay.
 21 A. I read certain wording from the MySpace
 22 that had been printed and, after I read two or
 23 three statements, she said, you don't have to read
 24 anymore. She said, I accept the punishment.