

**BOARD OF SCHOOL DIRECTORS
MOUNT ASCUTNEY SCHOOL DISTRICT
WINDSOR, VERMONT**

In re: Tiffany Riley 16 V.S.A. § 243(d)

NOTICE OF DECISION

This matter came before the Board of School Directors (“Board”) of the Mount Ascutney School District for a 16 V.S.A. § 243(d) hearing on September 10, 2020, regarding possible termination of Tiffany M. Riley (“Employee”) as principal of the Windsor School. The District’s superintendent, Dr. David Baker (“Superintendent”), was represented by Attorney Pietro J. Lynn. Employee was represented at the hearing by Attorneys William H. Meub and Andrew J. Snow. Attorney John H. Klesch served as legal counsel to the Board.

Pursuant to a stipulation of the parties (attached hereto as Exhibit 1)¹, the grounds for possible termination are stated in a written notice entitled “Amended Specification of Potential Performance Issue Regarding Tiffany Riley to Provide a More Definite Statement of the Grounds for # 4 and # 5.” (Exhibit JJ). The grounds noticed for possible termination are:

1. Ms. Riley posted statements on social media that were inconsistent with the expectations for a principal.
2. Ms. Riley failed to take down the statements when asked to do so by her supervisor.
3. Ms. Riley failed to coordinate subsequent posts despite requests that she do so by her supervisor.
4. Ms. Riley failed to disclose to the Board important information concerning interactions with families regarding equity issues.
5. Ms. Riley failed to exercise sound professional judgment in connection with the interactions with the community, her supervisor and the Board concerning issues having to do with a request for a BLM flag at graduation, social media posts and her subsequent conduct.

Prior to the commencement of the hearing, Attorney Meub asked on behalf of his client that the hearing be conducted in open session. The Board exercised its right to hold the hearing in executive session.

Also pursuant to stipulation, the parties submitted pre-filed written direct testimony from

¹ The Stipulation features an agreed deadline for the Board’s decision to have been issued by September 30, 2020. The parties have consented to an extended deadline of October 14, 2020.

five witnesses and conducted cross and other live examination of three of those five witnesses. The witnesses presented are as follows:

- Superintendent David Baker (prefiled direct and live cross-exam/testimony);
- Tiffany Riley (prefiled direct and live cross-exam/testimony);
- Kenneth Kramberg (prefiled direct and live cross-exam/testimony);
- Kimberly Gogan (prefiled testimony);
- Mary Schell (prefiled testimony).

All witnesses' prefiled-testimony was submitted under written affirmation of truthfulness, and all live witnesses were placed under oath before they testified. No party asserted specific objections to admissibility of any of the pre-filed testimony prior to or during the hearing.

The parties stipulated² to admissibility of a number of exhibits, including several audio and video recordings. Employee submitted twenty-six exhibits (Exhibits 1-26, Bates # 001-186), and the District submitted thirty-seven exhibits (Exhibits A-OO (KK, LL, NN, OO reserved), Bates # 001-156), though there are many overlapping exhibits between the parties' submissions. Employee's exhibits are presented with an exhibit list which states exhibit numbers, but individual exhibits do not have a number sticker affixed to them.³ Throughout this decision, Employee's exhibits are generally referenced only by the Bates number, except in the case of the relevant audio/video recordings submitted by Employee. Exhibits are identified either as "District" or "Employee" with reference to the exhibit letter (i.e., "District A" / "Employee 22"), Bates number ("District at 0125" / "Employee at 077"), or both letter and Bates number (i.e., "District A at 001" / "Employee 4 at 011").

The proceedings on September 10, 2020, were conducted via a restricted access Zoom video conference, and a court reporter also attended and created a stenographic recording.

On September 9, 2020, Employee's and Superintendent's attorneys submitted pre-hearing memoranda. The parties' attorneys also presented opening and closing statements during the September 10 hearing.

Based on its careful consideration of the record, arguments made during the hearing, and the parties' memoranda, the Board renders the following decision.

Findings of Fact

The Board has conducted its hearing of this matter as a contested case and has

² Prior to the hearing, Employee objected to one page of District MM, and the Board's designee ruled the one page (District at 0129) inadmissible.

³ It also appears District MM does not feature an exhibit sticker.

endeavored to follow the Municipal Administrative Procedures Act, 24 V.S.A. Chapter 36, though the Board has not formally adopted MAPA for this proceeding. The testimony and exhibits presented by the parties constitute the evidence in the record. The Board states here the facts it finds are relevant and supportive of its decision, based on evidence presented in the record.

1. The Mount Ascutney School District (“District”), the employer in this case, operates a school for grades kindergarten through twelve. District A.

2. The District is governed by a six-member board of school directors (“Board”), of which five seats were filled as of the time of the hearing. Hearing Transcript at 4.

3. The District is a member of the Windsor Southeast Supervisory Union which employs the District’s superintendent. Superintendent Pre-Filed Testimony (hereafter “Superintendent PFT”) at 1.⁴

4. Effective on or about July 1, 2015, the Board hired Employee as principal of the Windsor School. Employee at 0171.

5. Up to June, 2020, Superintendent found Employee’s job performance to be generally satisfactory. Superintendent PFT at 2.

6. In 2017, Superintendent completed an evaluation process for Employee for the 2016-17 school year, which was a “positive” evaluation. Superintendent PFT at 1; District at 0150-0152.

7. Superintendent and Employee met and spoke regularly about issues concerning the school, both student and staff concerns. Employee was not always willing to see both sides of an issue and could be stubborn when facing criticism. It was difficult for her to admit when she was wrong, which Superintendent advised her was not a good quality for a school leader. It is important for administrators to hear criticisms, consider them thoughtfully, and respond in a way that demonstrates a commitment to growth. Responding to criticisms or unwanted requests by becoming defensive is not desirable or satisfactory job performance. Superintendent PFT at 1-2.

8. During her employment with the District, Superintendent had made clear to Employee that he was her supervisor and he expected her to follow his instructions when given. Employee would sometimes get upset when Superintendent would make suggestions related to a staff issue, a parent issue, or an administrative team issue. Superintendent PFT at 2.

⁴ Employee’s pre-filed testimony includes paragraph numbers, Superintendent’s pre-filed testimony includes only page numbers.

9. District administration has worked very hard to establish an environment supportive of principles of equity and inclusion, and Employee attended many meetings on the issue and was required to implement those principles at Windsor School. Superintendent PFT at 8.

10. During her employment as principal for Windsor School, Employee has been a member of the Vermont Principal's Association Equity Practitioners Network Initiative, which is an initiative focused on increasing equity literacy in Vermont's schools through public engagement, individual practice, and the development of local equity-literate teams. Employee PFT ¶ 15; Employee at 056, 0120.

11. Her work as Principal included promoting greater racial equity at Windsor School. Employee PFT ¶ 17; see also Hearing Transcript at 173-175 (“We also had trainings, staff training specific to issues that the school had experienced over the years related to discrimination. And the goal of the ... those trainings was to first recognize that there's an issue, recognize that discrimination and racism do indeed exist, and then figuring out actual steps to address those issues. So that was part of my goal to improve my leadership skills and strategies, in addition to helping my school move forward with social justice and racial justice.”).

12. When actively serving as Principal, Employee served as head of the Leadership Team at Windsor School and, under her direction, the Leadership Team focused on the professional development of activities and trainings so that Windsor School will be a more equitable school. Employee PFT ¶¶ 14, 18.

13. Recently before the date 2020 graduation was to take place, the police killing in Minnesota of George Floyd, an African American male, sparked national attention and protests. See Employee PFT ¶ 42; Employee at 003, 016, 079; Hearing Transcript at 195.⁵

14. In a June 1, 2020, “Final Reflection” Employee authored (Employee at 0120-0127), she states “I cannot end this paper without acknowledging the recent injustice that occurred in Minneapolis. Discrimination, racism, and hate are pervasive. I worry about our future, the division of our nation”

15. Windsor School graduation ceremonies were scheduled to take place, and did take place, on June 5, 2020. Employee PFT ¶ 55; Superintendent PFT at 2.

⁵ See generally https://en.wikipedia.org/wiki/Killing_of_George_Floyd. The Board assumes the parties will not object to its taking “judicial notice” of general information concerning said events, as both parties referred to “George Floyd” in both pre-filed and live testimony, apparently with the understanding that everyone involved in these proceedings is familiar with the general facts of the death of Mr. Floyd.

16. Prior to graduation, an American flag was painted on Windsor School grounds in the area where graduation ceremonies were to be held. Employee PFT ¶ 29; Superintendent PFT at 2. There are differences in witness accounts as to who directed/caused the flag to be painted and why, but that fact is not relevant to the Board’s decision.

17. Employee and Superintendent both received a 9:34 AM June 2, 2020, email (addressed to Employee, cc’d to Superintendent) from Iyanna Williams, a Windsor School Alumna. Employee at 001. The email included statements describing Ms. Williams’ views about the display of the American flag at graduation “in light of recent times,” generally with respect to concerns that display of the flag is associated with exclusion of African American citizens from political considerations. A link to an opinion piece on theguardian.com was included in the email, which describes the writer’s concerns whether the American flag has become a symbol associated with anti-minority views.⁶

18. Employee, Superintendent, and Jim Taft from the school facilities department, discussed the issue of the painted flag following receipt of Ms. Williams’ email. They agreed that the painted flag would not be removed from the graduation site. Riley PFT ¶¶ 33-34.

19. Superintendent responded to Ms. Williams by email at 5:02 PM June 2, 2020, cc’g Employee. See Employee at 002. Superintendent’s email acknowledged that community members have different views of the meaning of the American flag and stated that the painted design was “in the planning stages long before the events of this past week.”

20. Employee responded by email at 5:46 PM June 2, 2020, which the Board understands did cc Superintendent although the exhibits do not make it absolutely clear who was cc’d. See District D; Employee at 003. Employee’s email echoed the point that the flag was painted prior to the events involving George Floyd.

21. Ms. Williams emailed Employee and Superintendent at 6:41 PM June 2, 2020, asking that the decision not to remove the flag be reconsidered and raising the idea whether something could be added to display at graduation for the purpose of “making people of color feel included in this.” Employee at 004.

22. Shortly after Ms. Williams’ 6:41 PM email of June 2, Superintendent emailed Employee at 6:46 PM stating that Employee’s idea of displaying something representative of Ms. Williams’ concerns was a good idea and offering to “talk tomorrow.” Employee at 005.

23. Superintendent did not hear anything further from Employee on the subject of

⁶ See <https://www.theguardian.com/world/2017/jul/04/american-flag-stars-and-stripes-sinister-july-4> (opinion entitled “I grew up with the American flag. Now, the stars and stripes seem hostile,” by Chase Quinn, July 4, 2017).

whether to add Black Lives Matter (hereafter also stated as “BLM”) signage or messaging to the graduation site. See Superintendent PFT at 4 (“I don’t know what happened after this conversation, but Tiffany never contacted me about painting any message on the field or raising a BLM flag at graduation. I would have expected her to involve both me and the Board about an issue like this.”).⁷

24. Also shortly after Ms. Williams’ 6:41 PM email of June 2, Employee emailed Ms. Williams at 6:52 PM asking for her thoughts as to what might be added to the graduation site display, and she asked/suggested whether any of the following slogans might be worthwhile: “United We Stand; All Means All; Stop the Violence; Equity for All.” Employee at 006.

25. Erin Rockwood is a Windsor School employee and parent, and she is married to Kabray Rockwood, an African American man who is a coach at the School. Superintendent PFT at 2. Ms. Williams resided in the Rockwood household at the time of relevant events. *Id.* at 2.

26. On June 2, 2020, Employee texted Ms. Rockwood to ask her opinion about Employee possibly including comments about George Floyd’s death in Employee’s graduation speech. Employee PFT ¶ 42; Hearing Transcript at 95. The text messages on June 2 are exhibits appearing at Employee 010-013.⁸ Ms. Rockwood’s texts included a request that the painted American flag be removed from the school grounds before graduation, with a detailed explanation of why she felt it was problematic to be displayed at the graduation site.

27. Ms. Williams emailed Employee (apparently not including Superintendent) at 11:24 AM on June 3, 2020. Employee at 007. Ms. Williams’ email includes the statements:

Phrases like “all means all” and “united we stand” are politically correct ways of saying all lives matter. This statement “all lives matter” has been used to take away from pointed efforts to save black lives. Black lives matter has a hidden “too” attached to the end of it, because until Black lives matter, all lives can’t matter.

28. Employee responded by email at 11:29 AM on June 3, 2020, with no cc to Superintendent, including thanking Ms. Williams for her thoughts and indicating she would reach out to the school’s buildings and grounds person. Employee at 008.

29. On June 3, 2020, Employee spoke with Mr. Taft. Employee PFT ¶ 46.

⁷ Throughout Vermont, school boards have made the policy decision whether to display Black Lives Matter materials on a school campus. Exhibit GG at 18:30-18:50.

⁸ Employee’s exhibit list indicates that the text message exchange between Employee and Ms. Rockwood appears at Bates # 010-012, but the message appearing on 012 appears to be cut-off and clearly continues on 013.

According to Employee, Mr. Taft told her that he had spoken with Superintendent and that they agreed that “Black Lives Matter” should not be painted on the hillside at the graduation site because of concern about bringing politics into graduation. Hearing Transcript at 103, 105. According to Superintendent, he spoke with Mr. Taft and did discuss “putting something under the flag, but certainly nothing about the Back Lives Matter flag or painting something about Black Lives Matter” and said he would not “have any problem putting something under the flag ... if he felt he had time to do that” Hearing Transcript at 59. Employee agreed with not painting a Black Lives Matter flag on school grounds for graduation due to concern over disruption and bringing politics into a school event. Employee PFT ¶ 47.

30. Employee emailed Erin Rockwood at 2:55 PM on June 3, 2020, in part asking Ms. Rockwood: “[D]o you have a Black Lives Matter poster, flag or anything we could borrow for the school. Iyanna has asked that we post a Black Lives Matter sign up on school ground and I want to honor her request.” Employee at 009.

31. Ms. Rockwood responded by email at 6:36 PM on June 3, 2020, providing information about a gathering taking place concerning racial equity and also letting Employee know that she did not have a Black Lives Matter flag. She also asked whether a BLM flag could be painted on the grounds and indicated that she would ask Ms. Williams if she knew where a BLM flag could be obtained and indicated “We will talk and get back to you very soon. Thank you!!” Employee at 017.

32. Ms. Williams emailed Employee at 9:31 AM on June 5, 2020, asking if anything had been decided regarding graduation. Employee at 018. Employee states that Superintendent was cc’d on the email, but the exhibits do not appear to confirm that fact. Employee PFT ¶ 56.

33. Graduation took place on June 5, 2020, with no added display regarding BLM or similar themes. Superintendent PFT at 4; Employee PFT ¶ 57.

34. At 10:50 AM, on June 8th, 2020, Ms. Williams emailed both Superintendent and Employee, including stating her disappointment that no display regarding racial equity was added to graduation, as well as stating thoughts about expectations for the District going forward. Employee at 019.

35. Superintendent responded to Ms. Williams’ email at 11:02 AM, June 8, 2020, cc’g Employee, stating in part that it was “very insulting that you lump” all school administrators together. Employee at 020.

36. Employee responded to Ms. Williams’ email at 11:16 AM, June 8, 2020, cc’g Superintendent, stating in part that Employee had asked Ms. Rockwood to request a BLM flag or poster from Ms. Williams for use at graduation, and had also proposed that Ms. Rockwood’s children could make one, and “I never heard back on this.” Employee at 021.

37. At 11:42 AM, June 8, 2020, Ms. Williams emailed both Employee and Superintendent, including asking why neither attended the previous night's rally, reviewing prior communications around whether something concerning racial equity would be displayed at graduation, and commenting "It is so sad to me that you have both decided to respond out of anger, instead of action." Employee at 022.

38. Employee responded by email at 11:06 PM, June 8, 2020, cc'g Superintendent, and stating that Employee's prior email "was not sent with any hint of anger" and stating why she was unavailable to attend the rally. Employee at 023.

39. On June 9, 2020, at 2:09 PM, Erin Rockwood sent Employee a lengthy email which opened with the statement "I wanted to reach out as Iyanna talked to me about the back and forth you had yesterday." Employee at 024. Ms. Rockwood wrote in part:

Today she informed me that in your back and forth you had responded saying that you had asked me a question regarding the Black Lives Matter flag and that I hadn't responded. That you had requested that maybe the kids make posters. I was very taken back by this. Am I to think that it is my fault that black lives were not represented on the hill because I didn't have my children make posters? I am feeling broken by this. I have to say that I don't feel like it is my responsibility as a parent to do the work to represent the black community of Windsor. Asking kids of Windsor to make posters to represent their race because the school didn't take the steps to do it just seems so off.

...

Please understand that this email is an extended hand to help to create change and to take steps to better educate our community, our children, and our teachers experience in an all-inclusive school building ... together.

40. On June 10, 2020 at or about 10:00 PM, Employee made a post to her personal Facebook page, Employee PFT ¶ 72, which post appears as District M and reads as follows:

I firmly believe Black Lives Matter, but I DO NOT agree with the coercive measures taken to get this point across; some of which are falsified in attempt to prove a point. While I want to get behind BLM, I do not think people should be made to feel they have to choose black race over human race. While I understand the urgency to feel compelled to advocate for black lives, what about our fellow law enforcement? What about others who advocate for and demand equity for all? Just because I don't walk around with a BLM sign should not mean I am a racist

41. Employee states in pre-filed testimony that she was concerned at the time of her post with reports of violence connected to BLM demonstrations which followed the killing of George Floyd. Employee PFT ¶¶ 71-73.

42. Employee further states in pre-filed testimony that her intent in making the post was to express her concerns and views that such violence would hurt the goals of BLM movement, that she agrees with said goals, and that she was seeking input from friends to better understand the situation. Employee PFT ¶¶ 74, 77; see also Hearing Transcript at 183:3 – 185:20 (Employee’s answer to question “What was going on that night that you felt compelled to write that post and why use those particular words?”).

43. Posting to Employee’s private Facebook page made the June 10 post visible to approximately 280 people. Superintendent PFT at 6; District GG (recording during which Employee estimated she has 280 Facebook friends).

44. Also on June 10, 2020, Kabray Rockwood, the husband of Erin Rockwood and a coach at the Windsor School, posted Employee’s June 10 Facebook post to his public Facebook page along with comments critical of the post and critical of Employee’s non-attendance at the BLM rally. Employee PFT ¶ 78; Employee at 036.

45. Employee’s June 10 Facebook post generated over one hundred comments and was reposted or copied by others so that it became widely shared. Superintendent at 6.

46. On June 11, 2020, at 6:57 AM, after seeing that he had shared her initial Facebook post, Employee sent Mr. Rockwood a private Facebook message which stated in part:

Perhaps my post wasn't clearly articulated. It certainly was not intended to offend anyone. Here's some context behind it.

I have been getting harassed via email about the American Flag painted at school that was never intended to offend anyone. I was ridiculed for not putting a BLM sign up at school when truly I have no issue with one being placed there. I have been informed our school does not do anything for people of color when I've been working really hard to educate our faculty to recognize issues related to discrimination and racism. The comments made about me, like in your Facebook post are so far from who I am as a person and it's frustrating. I'm accused of not getting it or caring about black lives because it didn't go to the rally on Sunday which so didn't go because I have personal things going on. I'm struggling to get behind BLM, not because I disagree. I don't disagree at all. It's become a topic where you can't say anything. All lives matter I've been told is the wrong thing to say.

Employee PFT ¶ 79, Employee at 037.

47. Having been alerted to the June 10 Facebook post by a community member, who transmitted the post along with an email stating “I strongly suggest you get ahead of this before

the news starts knocking,” Superintendent emailed Employee at 7:42 AM on June 11, 2020, regarding the post, stating in part “I don’t know where this post came from, but it might be that you were hacked.” Employee at 038-041.⁹

48. At approximately 8:00 AM on June 11, 2020, Superintendent telephoned employee. Superintendent PFT at 8, Employee PFT ¶ 82. According to Employee, Superintendent was upset and “suggested” that she take down the Facebook post. *Id.* Employee also testifies that she “suggested the Post should stay up” *Id.* According to Superintendent, during their call he “confronted her and asked her to take it down” and he “remain[s] baffled by Tiffany’s refusal to comply with my instruction.” Superintendent PFT at 8.

49. At approximately 4:00 PM on June 11, 2020, Superintendent again telephoned Employee, who audio-recorded the call.¹⁰ Employee PFT ¶ 83. Employee statements in pre-filed testimony regarding this call with Superintendent include the following:

- a. Superintendent “called me a racist,” was upset, and “told me the School Board would likely terminate me.” Employee PFT ¶ 84.
- b. Superintendent “again recommended that I take the initial post down and issue an apology post. He clearly stated he was not ordering me to take it down. He told me that this was my decision to ultimately make.” Employee PFT ¶ 85.
- c. Regarding an apology post, Superintendent “said I could share it with him first, but it was not necessary.” Employee PFT ¶ 86.

50. According to the Board’s review of Employee 25, the audio recording of the 4:00 PM June 11, 2020, telephone call:

- a. There is no statement by Superintendent calling employee a “racist.” Superintendent stated that he did not think Employee is a racist, but that the Facebook post was “a racist post.” Employee 25 at ~ 17:35.
- b. There is no statement by Superintendent that the School Board would likely terminate Employee.
- c. Superintendent’s statements regarding the Facebook post also included the

⁹ The Board does not recall evidence in the record whether Ryan Hebert, who emailed the post to Superintendent, received it as one of Employee’s Facebook friends or via some other channel.

¹⁰ Exhibit 25 makes plain that it was Employee who audio-recorded the June 11, 2020, afternoon telephone call with Superintendent.

following in substance¹¹:

- i. “From a cultural standpoint, and where we are right now standpoint, it was not a good post and it was not good timing for that post.” Employee 25 at ~ 0:30.
 - ii. “Whatever we were doing in terms of trying to educate, formulate, and move folks along, we took a big step back with that post.” *Id.* at ~ 6:55.
 - iii. “The tenor and tone of the post did not help, I have been trying to think about ways you can get in front of it.” *Id.* at ~ 7:50.
 - iv. “Defensiveness is not going to move us forward.” *Id.* at ~ 9:08.
 - v. “We have got to get this community there and you’ve got to get to a different spot in your thinking about this to lead that school, I really believe that. This is a tough time right now and you’ve had a minor maybe a major setback here with that post.” *Id.* at ~ 9:55.
 - vi. “It was not a good post, it was a huge mistake, it is going to diminish your credibility, hopefully only in the short run if we can figure out a way to recover.” *Id.* at ~ 12:35.
 - vii. In response to Employee asking his recommendation moving forward: “Well I think some of the direction going forward is really going to depend on your ability to embrace the wrong in that post and move forward... but what I am seeing in you now is more in defense of that post than an understanding of how that post might have hurt and injured a fair number of people both white and minorities in Windsor. ...” *Id.* at ~13:30.
 - viii. “When we take on these kind of leadership positions, our responsibilities go much deeper and much further and we are held to a higher standard. You didn’t meet that standard last night. You came way underneath that standard. Can you recover from this? I think so but it is going to take a whole different attitude and demeanor as we go forward.” *Id.* at ~ 14:30.
 - ix. “Your statement was inflammatory; it was incendiary and quite frankly it was racist.” *Id.* at ~17:35.
- d. Superintendent addressed the subject of Employee removing the post as follows:
- i. “I suggested you take it down, but you did not want to do that.” Employee 25 at ~15:30.
 - ii. “I think it should come down.” *Id.*

¹¹ Quoted statements are intended to present quotes from the speaker, reasonably close to verbatim as to the substantive verbiage spoken.

- iii. “I think taking it down shows a level of respect for those who are incensed by it.” *Id.*
 - iv. “You do what you have got to do but I think it shows some level of respect for what people are saying about the post.” *Id.* ~ 20:00.
 - v. “I would take the post down and start with a fresh post.” *Id.* ~21:30.
 - vi. “I’m almost thinking it needs to come down, but you have First Amendment rights, you’ve got a right to keep it up or take it down.” *Id.* ~ 22:45.
- e. Employee’s statements during the telephone call included in substance:
- i. “I personally by the Rockwoods was called a racist because I did not put a BLM sign at school.” Employee 25 at ~ 5:00.
 - ii. “I was called a racist by the Rockwoods because I didn’t go to their BLM rally Sunday.” *Id.* at ~ 5:23.
 - iii. In response to the question of where she had been hearing the Rockwoods call her a racist: “Emails; and you have been included in the heated emails from Iyanna ... There’s a belief in that household from Iyanna and from Erin, who has also been emailing me, and saying how Windsor School does not support people of color, Windsor School does nothing to address racism, they can’t even put a BLM sign out at graduation if they paint an American flag on the hill. That is where that post is coming from.” *Id.* at ~ 5:40.
 - iv. “I am actually a little appalled that you are not standing up for me ... I am a little offended that you my leader who has known me for 7 years would even sit here and suggest that there is some racist in me. I am a little offended by that.” *Id.* at ~7:10.
- f. Discussion of a possible apology or replacement Facebook post included the following exchanges:
- i. Superintendent: “I think it needs to be followed-up quickly on your Facebook page and maybe otherwise with ‘I mistakenly posted something last night that was without clear thought and I really feel bad about it.’” Employee 25 at ~ 20:00.
 - ii. Employee: “I wanted to add a comment apologizing for offending so many people because that is not what it was intended to do.” *Id.* ~ 20:45.
 - iii. Superintendent (after viewing a text from Employee with a draft apology post): “What you wanted to add was ‘I’m saddened my post was taken out of context.’ No, that’s not apologizing. Apologizing says I’m sorry I posted ... That’s like me saying to you, ‘I’m sorry you feel that way.’”

No, no, no. 'I'm sorry I did this which then in turn made you feel this way.' That's why I didn't want you to send that one out because that's not right." *Id.* ~21:05.

- iv. Superintendent: Based on the historical context, "you've got to make amends, that's my best recommendation to you, absolutely critical." *Id.* ~21:45.
- v. Employee: Instead of removing the original post, "I would rather make a separate statement saying 'I made a post that I apologize if it offended people because that was certainly not the intention.'" *Id.* at ~22:15.

51. Over June 11-12, 2020, Superintendent and Employee exchanged text messages appearing at Employee at 043-046. Employee's texts included "FYI – I am getting advice from my black US Marshall [sic] friend. I trust his judgment on this issue more than anyone. It's important to note he said my post is not racist at all. His wife is an equity professor at the University of Florida and will help me with my response." Superintendent responded "I think that's fine Just remember that you don't work for that Marshall [sic] and you don't work in Florida. You need to be responsive to your school board and to me. So far it's not going well. ... By the way it's still my strong recommendation that you take that post down."

52. Several times on June 11, 2020, Superintendent advised Employee that she should work with him on a follow-up post addressing the June 10 post. Superintendent PFT at 8.

53. On June 11, 2020, beginning at 10:02 AM, Employee and Assistant Principal Kate Ryan engaged in a series of texts in which Employee wrote in part: "Is it okay to say I'm over the Rockwoods. Kabray completely twisted a FB post I made on my personal FB page. ... My post was related to my frustration with being harassed by Iyanna and Erin about the American flag painted at graduation and the school not hoisting a BLM flag. ... David [B]aker wants me to take my post off Facebook. I'm refusing. ... There is another thread with 114 comments which include statements like I'm a terrible leader and should be terminated." Employee at 052-54.

54. On June 11, 2020, 11:49 AM, Employee emailed two Board members and the Superintendent regarding the subject "Facebook Post," which email appears as District R / Employee at 056. The email includes the following statements after "just to give you a little background":

- a. "A young black woman living in Kabray and Erin Rockwood's house demanded that we remove the flag."
- b. "The young woman emailed David and me on Monday, expressing her anger that we did nothing and making accusations that we do not support people of color, which is very far from the truth."

- c. “My email box has been filled with emails from the young woman and Erin Rockwood, and a woman on the town selectboard.”
- d. “The emails suggest Windsor School and the administration does not support BLM and that our school does nothing to support people of color or to address racism. I find that very insulting because as a member of the Vermont Equity Practitioners Network, I have been working diligently with my school leadership team and faculty to address inequity issues.”
- e. “I have been accused of being racist for not hoisting a BLM flag, ridiculed for not attending a BLM rally that the Rockwoods organized last Sunday and accused of being a poor leader and role model. All from the Rockwood family, who copied and posted my Facebook post out of context.”
- f. “I apologize for how all of this has blown up. It is disheartening to constantly be under scrutiny by certain families in the Windsor community.”

55. Employee testified that the inaccuracy of item (e) in the foregoing paragraph (54(e)) was based at least in part on her feelings being hurt that Ms. Rockwood would think that Employee did not care about BLM and did not take it seriously. Hearing Transcript at 129.

56. On June 11, 2020, 2:19 PM, Belle Moulton, the 2020 valedictorian from Windsor School emailed Superintendent and others expressing serious concerns over Employee’s June 10 Facebook post. The email also indicated eleven other recent graduates joined in sending it. Employee at 57-58 / District S.

57. At 10:35 PM on June 11, 2020 (see Employee PFT ¶ 97), Employee deleted the June 10 Facebook post and issued a new post which appears at Employee at 042 and reads:

While self reflecting, researching, learning, and trying to make myself more aware of the struggles of the BLM movement, I recently made a public post that unintentionally offended many people. I understand the struggles of the black lives community and stand with them in the fight against racism. Prejudice, discrimination and racism has no place in the world. I love and support my community and will continue to reflect on, learn from, and continue to pursue equity moving forward.

58. On or about June 12 at 7:43 AM, Employee texted Superintendent with a copy of the text of the post she made to Facebook at 10:35 PM on June 11, 2020. Employee at 047. In the same June 12 text thread, Employee stated, “I’m also really saddened to think my boss who has worked with me for 7 years would be so bold as to call me and my husband racists. I can’t help but wonder how much of your own White privilege and guilt plays into that because that is not who I am at all.” *Id.*

59. Superintendent responded by text, at 10:00 AM on June 12, stating in part “As I said to your irate husband last night, I never called either one of you a racist. But I do call that post racist. We are all learning and we all make mistakes. I will never support that post. It does not reflect my values [] or the values of our school district. It is that simple.” Employee at 050.

60. Though Employee describes the June 11, 2020, Facebook post as an apology, Employee PFT ¶¶ 97, 99, the post in fact included no words of apology. See Employee at 042; see also Superintendent PFT at 9 (“It is not really an apology. The second post does not acknowledge the aspects of the first post that made it objectionable.”).

61. Employee did not include the phrasing “taken out of context” in her June 11, 2020, Facebook post based on the advice she received from Superintendent. Employee PFT ¶ 92.

62. On June 12, 2020, the Board met at noon and held an executive session, during which the Board expressed it was very distressed by Employee’s June 11 email to two Board members. In particular, the Board felt Employee continued to take a defensive position and refused to acknowledge that anything was wrong with the June 10 Facebook post and how she had handled the entire situation around the request to add an inclusive message at graduation. Superintendent PFT at 11.

63. The Board voted during its June 12 meeting to place Employee on paid administrative leave. *Id.*

64. Superintendent and Employee met remotely later in the afternoon on June 12, 2020, during which Superintendent advised Employee the Board voted to place her on paid administrative leave. He also told her of the Board’s desire to pursue a mutual arrangement for separation from employment. See Exhibit V (video recording of remote meeting).

65. Also on June 12, 2020, Superintendent sent Employee a letter confirming the information about paid administrative leave, which letter also included the statement: [The Board] see[s] no path forward for your leadership at the school given your recent post on Facebook and subsequent reaction to that post.” See Employee at 063.

66. Windsor Southeast Supervisory Union employee Heather Pogue sent Superintendent and Employee an email on June 12, 2020, at 6:25 PM expressing serious concerns over Employee’s June 10 Facebook post, including detailing why the Post is contrary to pursuit of racial equity. Employee at 065 / District Y.

67. The District received many similar messages to those presented in Ms. Pogue’s and Ms. Moulton’s emails. Superintendent PFT at 7.

68. At 8:05 PM on June 12, 2020, the District emailed¹² to parents, caregivers, and staff (including Employee) a public statement addressing the Board’s concerns related to the June 10 and June 11 Facebook posts. See Superintendent PFT at 11, Employee at 064. The Board’s statement included:

The ignorance, prejudice, and lack of judgement in these statements are utterly contrary to the values we espouse as a school board and district. However, these statements were not alone. They were followed later by a follow up Facebook post, which acknowledged no culpability, expressed no specific contrition or empathy, and showed no humility. Because of this glaring miscomprehension of the situation, we feel unanimously that Ms. Riley's continued role as our school leader damages the school and its students.

Ours is not a racially diverse school, so it is easy to forget or to be unconscious to the racial inequities that exist in the form of White Privilege in our community and our state. If we are not acknowledging White Advantage and working to remove it, we are not attempting to provide our minority students an equal opportunity for education. If we are not teaching all our students that bias exists in our community and working to remove it, we are complicit in its perpetuation.

We have expectations of the leaders in our schools — that they will strive to embody education as a living, fluid concept, one that encompasses listening, learning, and teaching as equal partners. We speak of creating lifelong learners, but as leaders, we must also continually listen and learn. There are expectations of trust, knowledge, honesty, and thought that are not present in everyday conversation. It is our responsibility to be aware of that, especially in our public statements.

69. On June 13, 2020, Employee emailed a letter and timeline concerning these events to Superintendent and the Board. Employee at 070-074. The letter included the following statements:

- a. “First, I am very sorry for what I wrote on my Facebook account, and for the hurt that it has caused.”
- b. “I am sorry for what has occurred, which has caused you to all conclude that I must be terminated as principal of the Windsor School.”
- c. “I am responsible for what I wrote. I should know that what I post on Facebook is not private and should not be used for dialogue with acquaintances.”

¹² The information on the bottom of the email print-out shows that it was sent out as an email “blast” to the District community via the “SchoolMessenger” service.

- d. "I greatly regret and am truly sorry for the harm that I have caused."
- e. "I am more than willing to make a sincere apology to the community and to make clear my thoughts and desires for the community as set forth in this letter."

70. The Board Chair emailed Employee on June 14, 2020, at 6:03 PM. Employee at 101. The email stated in part: "You have been missing from so much of the dialogue regarding the last several days, and we would like to hear from you." The email indicated the Board was planning to hold a special meeting on June 15 at 6:30 PM and that it "would like it very much if you would consider attending." Employee did not meet with the Board on June 15. See Superintendent at 13 (only meeting between Board and Employee was on July 6, 2020).

71. On June 18, 2020, the Board issued a public statement to parents, caregivers, staff and the District community which acknowledged the Board had placed Employee on paid administrative leave and noted that the Board was "working together to evaluate what is best for our students, our school and our community. Then, after careful consideration of all the information, we will make a decision regarding next steps." Employee at 107.

72. The Board met with Employee on July 6, 2020. See Exhibit GG (Video recording of meeting). Employee's focus was more directed at the Board's conduct in issuing its June 12, 2020, public statement than her own conduct. See also Superintendent PFT at 13 ("Tiffany stated that the post was her personal statement made on her private Facebook page and that she did not have any professional responsibility for the turmoil caused by her post. Tiffany blamed me and the Board for creating the disruption and for being critical of her post."). During the July 6 meeting, Employee's statements, and responses to questions from the Board included:

- a. "I feel terrible people that are upset or were hurt by this, and that our community is being hurt by this, I don't feel I did anything wrong though." Exhibit GG ~ 8:35; see also Hearing Transcript at 149:19-21 ("I told the board in my opening statement that I felt terrible about everything that had occurred and the disruption it had caused in the community.").
- b. Superintendent did ask Employee to remove the June 10, 2020, Facebook post when he spoke to her during the morning of June 11 and again when he spoke to her during the afternoon of June 11. Exhibit GG ~8:55; 10:25.
- c. When the Board asked Employee: "When you envision a path through this, how do you see the best possible outcome for all students pre-K through high school being brought about, and what role do you see yourself playing in it?", Employee responded in part:

I think a lot of that is dependent on the Board. I wonder if the Board feels that the public statements you made about me damaged my ability to continue to lead the school and lead the community. If I were to move forward certainly it would require a lot of repair

on Superintendent Baker's and the Board's end. ... I think a lot of it really depends on your end."

Exhibit GG ~ 6:30.

73. On July 27, 2020, the Board voted to dismiss Employee pending a hearing. See Stipulation ¶ 1.

74. The District was distracted from preparing for the coming school year by the need to deal with disruption in the school community from the Facebook posts. Superintendent PFT at 9, 11. Employee's response to criticisms caused the issue to become part of the problem instead of a learning opportunity. Superintendent PFT at 12.

75. The District and/or Employee received media inquiries concerning Principal's Facebook posts and/or the Board's actions from the Valley News (Exhibit T, EE), WCAX (Exhibit Z), True North Reports (Exhibit CC is an email from True North Reports to Employee stating in part "If you check out our website, you will see we publish tough commentaries on Black Lives Matter not much unlike you posted on Facebook"), and the Associated Press (Exhibit DD).

76. As of the afternoon of June 11, 2020, public comments, sentiment, emails and text messages regarding the June 10, 2020, Facebook post were "pouring in" to the District. Hearing Transcript at 43:21-44:4; see also *Id.* at 62:15-62:18 ("[S]he just stayed defensive and righteous about her stance in all of this. And I think that was egregious, because the community was beginning to get on fire about this, and she was not going to take any responsibility certainly on the 11th"); see also Exhibit 25 at ~ 0:01 (appearing to be Superintendent telling Employee during June 11 afternoon call that Board Chair and Vice Chair had been receiving public comments regarding June 10 Facebook post).

77. Published media coverage of the at-issue events first began to appear on June 12, 2020. See Employee PFT ¶ 103; Employee at 076. The Valley News Article appears to have been the first published news story and appears to have been posted to its website at 9:35 PM on June 12. Employee at 076. A Vermont Digger article was first published on June 14, 2020. Employee 12 at 081-099.

78. Kimberly Gogan is currently employed as a Flexible Pathways Coordinator at Windsor School, where she is entering her third year of employment. Gogan PFT ¶¶ 2, 4. Ms. Gogan has been a professional educator in New England for over 25 years. Gogan PFT ¶ 6. Ms. Gogan's testimony describes her familiarity with disciplinary proceedings at other schools, principally in New Hampshire, but her testimony does not describe any familiarity with discipline of principals in Vermont which the Board finds would be material to whether just cause for dismissal exists here. The Board thanks Ms. Gogan for her participation.

79. Mary Schell is currently employed as a secondary social studies teacher at Windsor School, where she is entering her fourth year of employment. Schell PFT ¶¶ 3, 4. Her testimony primarily consists of her opinions as to Employee's leadership qualities and possible ways in which her Facebook posts might have been addressed. The Board thanks Ms. Schell for her participation but it does not find Ms. Schell's testimony material to whether just cause for dismissal exists here.

80. Kenneth Kramberg is a University of Vermont employee who, since 2007, has worked as a technical advisor, consultant, and trainer. Kramberg PFT ¶ 2. His work includes 15 years of consulting with Vermont school districts on disciplinary issues concerning school principals. Hearing Transcript at 211:9-14; 212:9-13. He has been proffered as an expert witness by Employee. *Id.* at 208:11-18.

81. Mr. Kramberg agrees it is an important job function for principals to be honest and truthful when communicating with their superintendents and boards, and that lack of truthfulness in that context is grounds for discipline up to and including termination of employment. Hearing Transcript at 193:21; 194:2.

82. Mr. Kramberg agrees that a principal's dishonesty with community members about important decisions is grounds for some level of discipline. Hearing Transcript at 194:9-11.

Conclusions

I. Bias or Prejudice

The Board has acted in this 16 V.S.A. § 243(d) proceeding in a quasi-judicial capacity with the obligation to provide Employee a full, fair, meaningful, and impartial hearing. Additionally, the Board is obligated to render its decision based on an impartial and unbiased review of the evidence submitted during the hearing.

At the outset of the September 10, 2020, hearing, Employee's counsel "raised the issue that the Board is biased and has actual prejudice" and so cannot be impartial in this matter.¹³ However, Employee's counsel further stated that he was raising these concerns as a formality, for the record. There was no request that any Board member, or the Board in its entirety, be recused from the hearing. Moreover, there was no indication by Employee in her pre-hearing memorandum or during her counsel's oral presentation that Employee has identified any evidence in the record as being relevant to the question of bias or prejudice. For these reasons, the Board has not attempted to examine whether any evidence in the record is probative of the question of possible bias or prejudice on the part of the Board or its members.

¹³ The issue was not raised in Employee's Pre-hearing Memorandum.

The Board acknowledges that it issued a June 12, 2020, public statement which includes the statement “we are resolved that she will no longer lead our school.” Employee at 064; see also District W (describing “no confidence” determination by Board). However, 16 V.S.A. § 243(d) clearly contemplates that, prior to conducting a hearing and deciding the issue of just and sufficient cause, a school board will have already reached a decision that circumstances at least appear to support dismissal of a principal for cause. In relevant part, the statute states:

(d) Dismissal. During the term of a contract, a principal may be dismissed by the board for just and sufficient cause by written notice setting forth the grounds, therefore. The board may provide that its order shall take effect immediately, or following a hearing. In either case, the principal shall be given an opportunity to request in writing a hearing within the 15 days following delivery of the notice.

Two scenarios are authorized by the statute. One scenario is that a board may issue an order effective immediately that a principal is dismissed, and then the board is to preside over a hearing if one is requested. Quite obviously the board will first have come to the view, before serving a quasi-judicial role in the event of a hearing request by the employee, that termination is warranted under this scenario. Because the statute nonetheless calls for a board to hear and decide the matter following such an initial determination, said board’s prior involvement cannot preclude it from carrying-out its quasi-judicial function. See *Petitions of John Davenport et al.*, 129 Vt. 546, 555-56 (1971) (administrative body’s prior involvement does not per se disqualify it).

Furthermore, two additional considerations weigh against the possibility of concluding this Board is impermissibly biased here. First, the record does not establish that the Board already decided, prior to the September 10, 2020, hearing, whether the information in the record does or does not show that there is just and sufficient cause for termination of Employee. Even if the Board may have decided as of June 12 that, in their opinion, it is not in the best interest of the District for Employee to continue to serve as principal, that is a separate question whether the record to be presented during a 243(d) hearing establishes the existence of just and sufficient cause by a preponderance of the evidence.

Second, the Board has not yet voted to terminate Employee. Rather, the record establishes that the Board has acted pursuant to 16 V.S.A. § 243(d) to terminate “effective only after a hearing before the Board. If there were some other way to force the issue to be aired short of what the statute requires, the Board would have chosen that route.” See District Exhibit HH.

II. Just and Sufficient Cause

Per the parties’ stipulation, the question to be decided by the Board is: “Is there just and sufficient cause under 16 V.S.A. § 243(d) to terminate Tiffany Riley as principal of the Windsor High School?”

Just and sufficient cause requires “some substantial shortcoming detrimental to the employer's interests which the law and sound public opinion recognize as a good cause for dismissal.” *Work v. Mount Abraham Union High Sch. Bd. of Dirs.*, 145 Vt. 94, 98, 483 (1984). The “ultimate criterion of just cause is whether the employer acted reasonably in discharging the employee because of misconduct.” *In re Harrison*, 141 Vt. 215, 220-21, (1982). The Vermont Supreme Court has developed a “two-part test for determining whether there was just cause for dismissal: (1) whether the employee's conduct was egregious enough that the discharge was reasonable and (2) whether the employee had fair notice, express or implied, that such conduct could result in discharge.” *Burch-Clay v. Taylor*, 2015 VT 110, ¶ 45 (internal quotations omitted). Both elements must be present for just and sufficient cause. See *In re Grievance of Muzzy*, 141 Vt. 463, 468-69 (1982). “Instances of repeated conduct insufficient of themselves may accumulate so as to provide just cause for dismissal.” *In re Brooks*, 382 A.2d 204, 207, 135 Vt. 563, 568 (1977).

“On the issue of fair notice, the ultimate question ... is whether the conduct was or should have been known to the employee to be prohibited by the employer. The standard is an objective one.” *In re Brooks*, 382 A.2d 204, 208, 135 Vt. 563, 568 (1977) (citation omitted). Where a public employer can fairly expect its employees to know conduct is forbidden and could lead to at least some form of discipline, the fair notice standard is met, including for dismissal. See *In re Grievance of Towle*, 665 A.2d 55, 60, 164 Vt. 145, 150 (1995); *Burch-Clay*, v. 2015 VT 110, ¶ 47.

16 V.S.A. § 243(d) limits the potential grounds upon which a principal may be dismissed to those cited in a written notice. Here, the parties have agreed the noticed grounds are the five issues listed in Exhibit JJ. The Board therefore reviews whether the evidence in the record demonstrates that any of the five grounds are established and, if so, is there just cause for dismissal.

Based on the findings of fact set forth above and the reasons stated herein, the Board concludes that there exists just cause to terminate Employee’s contract based on three of the five grounds cited in Exhibit JJ, namely grounds # 1, 3, and 5. The Board concludes that each of these established grounds is independently sufficient to demonstrate just cause for dismissal.

(A) Grounds # 1: Employee’s Conduct Making Facebook Posts.

The first grounds for dismissal is # 1: Employee posted statements on social media that were inconsistent with the expectations for a principal.

(1) The Content of the Facebook Posts

June 10, 2020 Facebook Post

The Board concludes that the June 10, 2020, Facebook post contains language which is appropriately recognized by many as denigrating, derogatory, or contrary to the movement for social equity for African Americans, including but not limited to the Black Lives Matter movement. See, e.g., District Y, CC; Employee 007, 033, 036, 057-058, 065-066. The record shows the content of the post is at odds with the values of inclusion and racial equality espoused by the District and the Board, which values have in fact been promoted by Employee as part of her work at Windsor School, because the June 10 Facebook post is readily susceptible to being construed to suggest racist themes. While there is no evidence that Employee personally holds racist beliefs, that is irrelevant to the point that the content of the post contains messaging reasonably susceptible to being construed as espousing racist views.

Moreover, even if it were a close issue whether the content of the post can be considered racist, it is clear that the post fails to advance equity ideals in a manner consistent with the District's and Employee's work. That is, even if the post does not advance racist views, it fails to advance equality for non-white community members.

June 11, 2020 Facebook Post

Even if she did not agree with all of the Superintendent's concerns about the effects of the June 10 post, Employee was on notice from her immediate supervisor, as of the morning of June 11, as to why that post was problematic. The Board agrees that it was essential that she issue a timely and sincere unconditional public apology if there was to be any reasonable chance to mitigate some of the harm taking place, thereby also preserving the possibility of salvaging Employee's position at Windsor School.

Nevertheless, the June 11 post was not a legitimate apology. The Board agrees with the following parts of Superintendent's prefiled testimony, that "It is not really an apology. The second post does not acknowledge the aspects of the first post that made it objectionable." Superintendent PFT at 9. As stated by the Superintendent during the recorded June 11 telephone call with Employee (Exhibit 25), an apology which says "Sorry you feel this way" is not an apology. An apology is a statement that says "I am sorry I did this which then in turn made you feel this way." Notably, immediately after Superintendent gave Employee this guidance during their call, she reverted again to wanting to make a statement which contained no actual apology. See Exhibit 25 at ~ 22:15 ("I would rather make a separate statement saying 'I made a post that I apologize if it offended people because that was certainly not the intention.'"). The Board agrees with the Superintendent's views that a further post "should have reflected on the impact of that [first] post. Should have taken responsibility for the divisiveness of that post." Superintendent PFT at 12.

(2) The Impact of the Facebook Posts

The impacts of the Facebook posts on the Windsor School and its community of students, parents, families, staff, and citizens of the school are substantial. As she states in her June 1 “Final Reflection,” it was part of Employee’s work as principal to advance racial equality and inclusivity within the Windsor School. Both Employee’s and Superintendent’s testimony indicate that it was in fact part of Employee’s job to promote racial equity in the Windsor School.

The effect of Employee’s June 10 post was diametrically contrary to that aspect of her professional responsibilities. It is not acceptable for a school principal to issue a social media post touching on subjects of race, equity, and justice without doing so in a way that is at least reasonably consistent with the District’s goals and work in these areas. Stated another way, it is unacceptable conduct for a principal to promote equity by day and then, on her own time, make a social media post on Facebook which undermines that work in a way that adversely affects the District, and that is exactly what happened here.

The effect of the June 10, 2020, Facebook post was and is serious disruption to the District’s work, including both disruption which has taken place and further disruption which would be likely to occur if Employee were to remain employed as principal of Windsor School. Generally, as Superintendent testified, the first and second posts led to significant disruption. Employee herself conceded that the Facebook posts caused disruption for the District when she met with the Board on July 6, 2020.

More specifically, evidence of actual disruption caused by the June 10 Facebook post is apparent throughout the record. Less than twenty-four hours after the June 10 Facebook post, “public comments, sentiment, e-mails, and text messages ... were pouring in” to the School District and, in Superintendent’s reasoned estimation, the situation and/or Employee’s ability to lead the school “was beginning to erode.” Hearing Transcript at 44:2-4. Employee’s June 10 Facebook post “comments, which were widely shared among Windsor Community members this week, led to calls for Riley’s resignation.” Employee at 076.

Additional examples of disruption to the District’s work and goals are evident in community reaction to the June 10 Facebook post. For example, on behalf of herself and 11 other recent graduates, Windsor School’s 2020 valedictorian Belle Moulton emailed the District on June 11, 2020 at 2:19 PM with concerns, stating in part:

Mrs. Riley holds a position of leadership in our town. We have entrusted her with the job to teach and guide our youth. How should we put our trust in her to teach and guide if she is so insensitive to the current issues in our nation? ... Do not give me another reason to be embarrassed of where I graduated from.

Similarly, Ms. Pogue’s June 12, 2020, email to the District states gravely in part:

I am the mother of black children – children who may, one day, attend Windsor High School. I am outraged to learn that the principal of Windsor High School posted extremely offensive and problematic racist thoughts on Facebook. Until steps are taken to address this concern, WHS will not feel like a safe space for my family.

Additionally, Mr. Rockwood’s “Disclaimer” prefacing his re-posting Employee’s June 10 post states in part:

Below is a statement from the principal of Windsor Schools, a school all my kids attend or attending, and a school in which I coach 2 sports. ... To say I’m disappointed that a person who reigns over the education of the youth of this town, and would be willing to put her views out there without understanding the repercussions of her actions is not an administrator I can support.

The District received many more messages similar to those sent by Ms. Moulton and Ms. Pogue. These posts show actual disruption of the Windsor School’s mission within the community, in that the authors were clearly each affected.

Further, the Board concludes that the Facebook posts most likely would continue to cause severe disruption to the Windsor School in the event Employee were retained as principal. It is self-evident that a K-12 principal making a social media post which is inflammatory as to racial equity issues will cause substantial disruption to a school district’s mission to foster inclusivity and equity for students of all races. Ms. Pogue’s, Ms. Moulton’s, and Mr. Rockwood’s commentaries each discuss the obvious fact that racist social media posts by the principal must be expected to have deleterious impacts on the Windsor School’s mission of promoting equity and inclusivity.

As Employee testified, her role as leader of Windsor School included “helping my school move forward with social justice and racial justice.” And, as Superintendent said during his telephone call of June 11 with Employee, “whatever we were doing in terms of trying to educate, formulate, move a group of folks along, we took a big step back with that post.”

Turning attention to the June 11 Facebook post, the Board finds it too is harmful to the Windsor School due to its omission of a bona fide apology. Superintendent’s pre-filed testimony sums up his reasonable assessment of the disruptive effects of the non-apology June 11 post:

It is not really an apology. The second post does not acknowledge the aspects of the first post that made it objectionable. ... The second post did not begin a restorative process. Instead, more people came forward who were critical of Tiffany’s statements and calling for action by the School Board. At the same time, other people were responding to criticism of Tiffany, supporting her apparent

anti-BLM position. ... We were now faced with dealing with the upset caused by the posts. If there had been an appropriate second post, composed with me and the Board's input, we could have collectively moved forward in a positive way, using the mistakes made as a learning tool.

Superintendent PFT at 9-10.

The Board briefly notes that it is well-recognized that a school professional's public statements which marginalize part of the school's constituency should be presumed to have disruptive impacts on the school's function. In *Munroe v. Central Bucks School Dist.*, 805 F.3d 454, 477 (3rd Cir. 2015), a teacher who made inflammatory blog posts about students later engaged in media coverage of the situation. The Court found relevant the Employee's conduct after the offensive speech in the blog posts:

We also observe that Munroe "did not take a conciliatory approach" in her subsequent media appearances. ... Instead, she purportedly defended her blog entries and refused to apologize for the comments. Students and parents were thereby presented with a teacher who expressed hostility and disgust against her own students and who, when publicly confronted with her comments, not only refused to apologize — but even went so far as to defend her derogatory statements in the local and national media.

The Board thus concludes that the content of Employee's second Facebook post, made on June 11, 2020, was inadequate to have possibly mitigated the impacts the June 10 post caused, both those which had already occurred and those which were reasonably likely to continue to materialize. The June 11 post thus played a role in, and likely exacerbated, the impacts caused by the June 10 post.

As discussed in *Munroe*, 805 F.3d at 475-76, "there is a special (perhaps even unique) relationship that exists between a public school teacher (or other educators, like a guidance counselor), on the one hand, and his or her students and their parents, on the other hand." Her status as the school principal heightens this rationale even further in the case of Employee. See also discussion in Section III, *infra*.

The Board concludes that Employee's June 10 statement had significant negative impacts on the Windsor School community. By failing to have issued a bona fide apology in her second post, when that is what the situation clearly warranted, the June 11 post at least extended those negative impacts. Thus, Employee's actions regarding the June 10 and June 11 Facebook posts are inconsistent with the expectations of a principal because of the resulting disruptive impacts caused by the posts.

(3) Private Facebook Page and The District's Public Statements

The Board rejects the notion that Employee posting the June 10 message only to her Facebook “friends” mitigates the situation. Any reasonable adult must be held to know that a private post to over 280 persons (see Exhibit GG, during which Employee states the number of “Friends” on her private Facebook page) has the potential to be widely distributed, and even distribution to 280 persons has the potential to cause disruption for a school district where at least some of those “Friends” are district employees or community members, of which Mr. Rockwood is both, for example. Stated another way, it was natural to expect that at least one of her “friends” would re-post the content.

Employee does not contend that there was no disruption of the District's affairs; indeed, she apologized for disruption she caused when she addressed the School Board on July 6, 2020. Instead, in her pre-hearing memorandum and during her July 6 meeting with the Board, she argues that it was the public statements and actions of the Superintendent and Board, which followed her Facebook posts, that caused disruption.

Employee's argument is flawed because it matters not that the Superintendent and Board made public statements that were critical of one or more of the Facebook posts. Any commentary by the Superintendent or Board on the content of the Facebook posts, particularly the June 10 post, had no effect on the actual content of the June 10 post.

Employee's misguided approach is echoed in her own sentiment texted to her friend Kate Ryan, that Kabray Rockwood “twisted” her June 10 Facebook post when he re-posted it. Mr. Rockwood's commentary did not alter the content of the June 10 Facebook post. He merely distributed it along with his thoughts about it, as was reasonable to expect of one's Facebook friend. See, e.g., Employee at 70 (Employee's June 13, 2020, letter to Board stating in part “I should know that what I post on Facebook is not private and should not be used for dialogue with acquaintances.”).

Moreover, the evidence shows that the impacts of Employee's June 10 post had already begun to manifest well before 8:05 PM on June 12, 2020, which is the earliest date indicated in the record that Superintendent and the Board first made any public statements. The earliest news coverage appears to be the Valley News' June 12, 2020, 9:35 PM online release of its coverage. By that time, the District was already being “flooded” with communications from the public, and members of the Windsor School community had already suffered their first reactions to the June 10 post as demonstrated in the record.

(4) Employee's Lack of Sound Judgment

Employee has claimed ignorance, at the time she made the June 10 post, of the significance of the language it contains. The Board finds this subject irrelevant to whether

discipline for the disruption caused by the Facebook post warrants dismissal, as the Board does not base its decision on whether Employee was trying to make a racist statement. Nevertheless, the Board observes that her choice to author a Facebook post, which she claims she did not understand yet which addresses topics of the utmost importance to the District, appears to support a grounds for discipline independent of the disruptive impacts her posts had.

Employee was aware of the recent and current prominence of issues surrounding African American equity in the United States. For instance, in the June 1, 2020, “Final Reflection” she authored (Employee at 0120-0127), she addressed current events by adding “I cannot end this paper without acknowledging the recent injustice that occurred in Minneapolis. Discrimination, racism, and hate are pervasive. I worry about our future, the division of our nation ...” In light of this awareness, which would be expected of any competent educator or administrator, a school principal must be expected to consider carefully public statements which touch on these issues. A competent school principal should realize that, particularly in the context of social unrest in June 2020, a Facebook post which, on its face, is at least questioning, if not critical, of some aspects of the Black Lives Matter movement, which uses language “choose black race over human race,” which compares the plight of Black Americans with members of law enforcement, and which concludes with “Just because I don’t walk around with a BLM sign should not mean I am a racist,” has a reasonable likelihood of causing very significant disruption within the school community.

Moreover, on June 3, 2020, Iyanna Williams emailed Employee describing the view that phrases like “all means all” and like terminology are used to diminish efforts to save Black lives. See Employee at 007. The Board does not necessarily find that Employee was required to believe that Ms. Williams’ statements on these subjects are in fact accurate and authoritative. Instead, the Board finds that Ms. Williams’ June 3 email was sufficient to place Employee on notice that language of the nature which she chose to write in her June 10 Facebook post had at least a significant potential to be read as questioning the validity of the pursuit of social equity for Black Americans. Stated another way: If Employee really did not know prior to June 3 that language such as appears in her June 10 Facebook post was likely to be viewed by many as inflammatory, Ms. Williams’ email was a warning that Employee should have taken reasonable steps to inform herself whether a statement such as her June 10 post was reasonably likely to be so viewed.

Given Employee’s awareness of the nationwide surge in protests related to police brutality and the notice by Ms. Williams that certain phrasing and messaging is understood to diminish the mission for equality and inclusion for Black Americans, it was extraordinarily careless, indeed reckless, for Employee to post her message on Facebook on June 10. Her posting on race issues without informing herself of the likely effects of her chosen text, including but not limited to alienating Black members of the Windsor School community, was unacceptably negligent. Employee’s lack of good judgment in issuing a post which touches on the issues of race, equality, and police actions, without exercising appropriate due diligence to

avoid presenting anti-equity themes which would cause serious disruption to the Windsor School, is inconsistent with the expectations of a principal.

(5) Just Cause

The Board finds just cause to dismiss Employee based on disruption resulting from her conduct posting statements on social media, which postings were therefore inconsistent with the expectations for a principal. In totality, Employee's conduct was egregious because of the potential for harm to the Windsor School community inherent in her conduct. Her actions caused outrage and led community members to believe that the principal of their community school held racist beliefs. Her actions led parents, alumni, and colleagues to question whether Windsor School is a place of inclusion for minority students and a place where appreciation for equity is fostered in non-minority students, staff, and families. Her actions undermined the work of the District on inclusion and equity, including her own. Her actions distracted the District from its work. And when she had the opportunity to meaningfully apologize in a public way, she instead told the community "I am sorry you feel that way," thereby failing to potentially ease the disruption she had caused.

Moreover, Employee must be held to have had implied notice that these actions on her part could lead to disciplinary action. No reasonable person holding the position of Vermont public school principal could be unaware that posting racially-charged content to Facebook would lead to disruption warranting disciplinary action. Again, this conclusion is particularly clear here, where Employee herself was expressly aware of the social climate and where she was directly involved in work to promote equity within the school she led.

Also, the Vermont Board of Education licensing rules include:

5236 Demonstrated competency as specified in the following administrator¹⁴ requirements:

5236.2 Teaching and Learning. An education leader promotes the success of every learner by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

¹⁴ "Administrator" means an individual licensed under 16 V.S.A. Chapter 51 the majority of whose time in a public school, school district, or supervisory union is assigned to developing and managing school curriculum, evaluating and disciplining personnel, or supervising and managing a public-school system or public-school program." Vermont State Board of Education Rules, Series 5000 § 5150 (Definition of terms).

5236.6 The Education System. An education leader promotes the success of every learner by understanding, responding to, and influencing the political, social, economic, legal, and cultural context.

Vermont State Board of Education Rules, Series 5000 – Licensing of Educators, CVR 22-000-010. A principal issuing social media posts at odds with inclusion and equity for minorities is clearly acting in a way that is contrary to the objectives stated in these two competencies. Thus, by rule, such conduct is presumptively disruptive to a school’s pursuit of these objectives set forth by the Board or Education. Certainly these rules provide every Vermont principal with notice that conduct which is contrary to these rules is grounds for disciplinary action.

In addition, at least as of their June 11 afternoon telephone call, Superintendent made clear that Employee’s future with the District was at stake. Thus, the Board concludes that she had actual prior notice that her conduct in failing to issue a valid apology could lead to disciplinary action.¹⁵

(B) Grounds # 3: Employee’s Failure To Coordinate
On Subsequent Posts.

The Board has already discussed its conclusions as to why the impacts caused by the content of the June 11, 2020, Facebook post present good cause for dismissal. Grounds # 3 is effectively the inverse. The Board concludes here that discipline is also warranted not because of what she posted on June 11, but rather because she did not avail herself of the opportunity to work with Superintendent on the replacement social media post.

Superintendent is not merely Employee’s immediate supervisor. He is the individual charged with managing all operations of the school system in accordance with School Board policies, such that his guidance to a building administrator deserves special weight. See Employee at 0119 (Board/Superintendent Relations Policy). Employee’s refusal to work with her boss, under the extraordinary circumstances triggered by her ill-conceived June 10 social media post, was egregious conduct.

When Superintendent extended her a possible “life-line” on June 11 to collaborate on a replacement Facebook post that might have the effect of mitigating the damage of her June 10 post, Employee chose not to take that opportunity. As Superintendent told her, he – not her friends in Florida – is her direct supervisor, yet she chose not to heed his guidance to work with him. The decision to reject Superintendent’s offer of collaboration on the June 11 post, after she

¹⁵ The Board takes no issue with her having done so, but her choice to record the June 11 afternoon telephone call with Superintendent is circumstantial evidence that she realized as of that afternoon that her employment status within the District was in jeopardy.

had been warned repeatedly of the stakes for her career, was a clear misjudgment that shows Employee is not suited to shoulder the great responsibilities of a K-12 principal.

The Board also concludes that Employee had at least implied notice that a Vermont principal's decision to reject guidance from a Superintendent on possible management of a crisis could lead to discipline up to termination. A reasonable principal must understand that failure to exercise good professional judgment in the face of a crisis, perhaps especially one created by the principal's own ill-advised actions, is ground for discipline up to dismissal. See Transcript at 79:11-13 (Employee agrees that it is "important for a principal to use judgment and discernment in her professional responsibilities.").

(C) Grounds # 5: Conduct Interacting With Community Members,
The Superintendent, And The Board.

The Board finds the record indicates just cause for dismissal under grounds # 5 as well. The Board reviews four issues under this grounds for dismissal:

- (1) Blaming community members for lack of BLM signage at graduation.
- (2) Posting to social media due to frustration with a Windsor School family.
- (3) Untruthfulness to School Board and unwillingness to accept responsibility.
- (4) Failure to accept direction from Superintendent.

(1)

In addition to the specific expectations of the District, the State Board of Education requires the following competencies for school administrators:

5236.1 Vision, Mission, and Goals. An education leader promotes the success of every learner by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by all stakeholders.

...

5236.4 Collaborating with Families and Stakeholders. An education leader promotes the success of every learner by collaborating with faculty and community members, responding to diverse community interests and needs, and mobilizing community resources.

Vermont State Board of Education Rules Series 5000 – Licensing of Educators CVR 22-000-010.

The Board finds that Employee's communications with Erin Rockwood did ascribe blame to Ms. Rockwood and Iyanna Williams for the lack of a BLM or similar display at the Windsor School graduation. The Board agrees with the sentiments of Ms. Rockwood's June 9, 2020 2:09 PM email, in which she expresses dismay that Employee wrote Ms. Williams saying she had asked Ms. Rockwood for display materials and "never heard back." It is outrageous that a school principal would communicate to a young alumna of the school that another community member, or her children who are students at the school, are to blame for lack of a BLM or similar display. The conduct once again demonstrates Employee's acts of deflecting blame to others instead of fulfilling her responsibilities as a building and school community leader. The Board finds this conduct to be an egregious example of Employee's failure to adhere to the most basic responsibilities of her position and standards of professional conduct. Such a failure is a grounds for dismissal of which every principal must be held aware.

(2)

The record reflects in numerous places that Employee's June 10, 2020, Facebook post was made not out of concern over civic unrest due to George Floyd's killing and other instances of racial inequity, but rather was her venting frustration over perceived slights directed at her by Ms. Williams and Ms. Rockwood. While Employee has testified that her motivations were otherwise, her contemporaneous statements and writings, such as her June 11 morning telephone call with Superintendent, her text messages with Kate Ryan, her June 11, 2020, Facebook message to Kabray Rockwood, and her June 11, 2020, email to Amy McMullen and Elizabeth Burrows, are persuasive evidence of her true motivations.

A school principal who is unable to check her frustration with a school community family, such that she uses social media as an outlet to vent that frustration, is not conducting herself in a professional manner. A school principal must be able to lead, build community, and represent the district with utmost professionalism, and "rise above" the perception that thoughtful criticism and questioning is the equivalent of an *ad hominem* attack on her character and values. Even if a principal is offended by constructive criticism, she fails to effectively lead the school if she chooses to deal with that criticism by making reactive posts on social media.

Moreover, the falsity (see (3) below) of the facts which apparently fueled Employee's conduct is further cause for serious concern. It seems there are only two possibilities: Employee either intentionally misrepresented the actual nature of the emails she received, or she failed to perceive them accurately. In either case, this aspect of her conduct justifiably concerns the Board greatly over Employee's ability to interact in an appropriate and professional way with Windsor School families.

The Board of Education rules once again make clear Employee's actions fail to meet a required competency of a licensed administrator:

5236.4 Collaborating with Families and Stakeholders. An education leader promotes the success of every learner by collaborating with faculty and community members, responding to diverse community interests and needs, and mobilizing community resources.

Thus, the Board concludes that Employee's acting-out due to taking personal offense from community members' emails demonstrates just cause for dismissal. More specifically, such conduct is an egregious failure of the performance expectations of a principal. Any reasonable principal should know that such conduct is absolutely unacceptable and is grounds for immediate dismissal.

(3)(a)

Employee's June 11, 2020, email to two Board members and the Superintendent regarding the subject "Facebook Post," which email appears as District R, contains several inaccurate statements, including as follows:

- "A young black woman living in Kabray and Erin Rockwood's house demanded that we remove the flag." The evidence shows that Ms. Williams was making requests via emails to Employee, and there is no evidence that Ms. Williams "demanded" removal of the American flag from the graduation site. See Employee at 001 ("... I feel the flag should be removed ..."), 004 ("I urge you to reconsider ... If it seems like a set back to remove the flag could we add something in addition, possibly to the other side?"), 007 ("I feel it is important that something is put in place to support us.").
- "The day before graduation, Erin Rockwood demanded we paint Black Lives Matters on another hillside at the school." The evidence shows that Ms. Rockwood was making requests via emails and texts to Employee, and there is no evidence Ms. Rockwood "demanded" the painting of Black Lives Matter at the graduation site. See Employee at 010-013¹⁶ (texts from Ms. Rockwood, which feature no demands from Ms. Rockwood concerning painting Black Lives Matters at the site); District H at 012 (June 3, 2020, email from Ms. Rockwood stating in part "I personally do not have a Black Lives Matter flag. Do you think one could be painted on the green next to the Bee?").
- "The young woman emailed David and me on Monday, expressing her anger that we did nothing and making accusations that we do not support people of color" The

¹⁶ See also Superintendent PFT at 4, noting Exhibit E is a text exchange between Employee and Ms. Rockwood. In fact, Ms. Rockwood's texts were sent in response to Employee texting her to ask her thoughts on whether Employee should mention George Floyd during Employee's graduation speech. See Employee at 010. Ms. Rockwood's response does express concern over the painted American flag, but it is respectful and appropriate and ends with "Again, I stand with you and this isn't easy but needs to be done. I love you[r] passion. You are my fearless leader. Let us lead this fight." Employee at 012-013.

evidence shows that Ms. Williams emailed Employee on Monday June 8, 2020, at 10:50 AM, stating that she was “saddened,” that she was “unfortunately not surprised,” and stating that she had spoken with a selectboard member and “we will be pushing for more, and you will be held to a higher standard in the future.” District J at 035-36. There is no evidence in the record indicating that Ms. Williams expressed anger toward Employee.

- “I have been accused of being racist for not hoisting a BLM flag [and] ridiculed for not attending a BLM rally ...” The evidence shows that Ms. Williams did email Employee and Superintendent inquiring as to why they had not attended a rally, see Exhibit J at 28, however there is no evidence in the record of comments which can reasonably be perceived as “ridicule” regarding non-attendance at the rally. There is also evidence that Mr. Rockwood did criticize Employee for not attending the rally, but this evidence also does not support the assertion Employee made that she was “ridiculed” for not attending. See Employee at 036. Nor is there any evidence in the record which the Board has identified of anyone stating to Employee a belief that Employee is a racist.

Employee made many of these same false statements to Superintendent on June 11, in her text message to Kate Ryan, and in her Facebook message to Kabray Rockwood, both school district employees. Further exacerbating the degree of poor judgment exercised by Employee, her message to Mr. Rockwood was complaining about his family members, Ms. Rockwood, and Ms. Williams, without naming them.

It is never acceptable for a school principal to make false material statements to a school board or a superintendent. See *In re Grievance of Hurlburt*, 820 A.2d 186, 195, 175 Vt. 40, 50, 2003 VT 2, ¶ 26 (employee’s lying during an investigation of employee is just cause for dismissal). When she was confronted about her June 10 Facebook post, Employee cited false factual bases as her motivation for issuing the post. In the instant matter, the deleterious impact of the false statements by Employee is heightened by the fact that the Superintendent and the Board were working to deal with the crisis created by Employee’s June 10 Facebook post. Employee was engaging in less than truthful behavior at a time when the Board and Superintendent were attempting to address the situation and curtail damage caused by Employee’s post. As Employee’s own expert witness testified, these circumstances are just cause for discipline up to and including dismissal, as Employee’s conduct is egregious and of such a nature that any reasonable principal would realize could lead to discipline up to dismissal.

(3)(b)

The Board agrees with Superintendent’s assessment of the skills and qualities necessary for a school principal to lead a school effectively and professionally. Those qualities include accepting and admitting a mistake and responding in a way that demonstrates a commitment to growth. Superintendent has advised Employee in the past, prior to any of this series of events beginning to unfold, of these performance expectations for a principal.

Employee's pattern of conduct during the chain of events which began with Ms. Williams' June 2, 2020, email raising concern about the American Flag at the Windsor School graduation site has exhibited a consistent effort to evade blame, a refusal to admit fault, and a failure to see both sides of the issue. This pattern continued even after the June 10 Facebook post began having major disruptive impacts on the Windsor School community and continued further even after Superintendent provided counsel to Employee, in his telephone calls and texts with her on June 11, 2020, on how to attempt to begin to remedy the disruption.

Employee did issue a letter of apology to the Board on June 13, 2020, after she had been advised on June 12, 2020, that she was being placed on administrative leave. However, her conduct after June 13 entirely undermines any possible sincerity of her apology. First, she declined to accept the Board's June 14 invitation to meet on June 15. Second, and more convincing, is that when she did ultimately meet with the Board on July 6, she acknowledged that her actions hurt the community and yet insisted that she had done nothing wrong. Indeed, when the Board asked her if she saw a way forward for her at the school, she blamed the Board's public statement for her circumstances and stated that it would be up to the Board, not her, to repair the situation.

Employee's behavior matches conduct which Superintendent has counseled her against. The Board therefore concludes that Employee's failure to act professionally in response to this crisis, particularly as it was perpetuated by her own actions, demonstrates she is incapable of performing the basic and essential functions of a school principal. This persistent shortcoming in her performance is egregious enough to warrant dismissal. Moreover, the Board concludes that Employee did have notice, based on Principal's counseling her in the past and on June 11, 2020, that failure to perform appropriately in these areas could result in disciplinary action.

(4)

A principal's failure to comply with reasonable employer requests constitutes serious misconduct. This misconduct is commonly referred to as insubordination and evidences a lack of respect for lawful authority. Insubordination in its various forms commonly constitutes just cause for termination of employment. *Grievance of Hurlburt*, 175 Vt. 40 (Vt. 2003). As stated in *Hurlburt*, "[i]nsubordination is a serious offense because it weakens the confidence management has in an employee's reliability in carrying out directives from management." 175 Vt. at 49; accord *Burch-Clay*, 2015 VT 110, ¶ 45.

The Board finds that one aspect of Employee's conduct that the record establishes, and which falls within grounds # 5, is her refusal to accept direction from Superintendent regarding steps to take after the June 10 Facebook post. See District JJ at 099 (Notice of grounds for dismissal includes that Employee initially refused to take down the post when instructed to do so by Superintendent). The Board does believe that the record establishes insubordination because Superintendent's communications to Employee that the June 10 post should be removed did, in context and cumulatively, constitute a directive to do so at the conclusion of each discussion

during which the subject was raised. Likewise, once again in the context of the situation, Superintendent's communications to Employee to work with him on a follow-up/apology post also constituted a directive.

Employee correctly points out that, during neither of the recorded conversations she had with Superintendent on June 11 and 12, is Superintendent heard to expressly use the words "order" or "direct" her to remove from Facebook the June 10 post or to coordinate with him on an apology post. However, it is not necessary for a supervisor to use such terminology in order for an employee's non-compliant conduct to possibly constitute insubordination. For example, in an unpublished entry order, a panel of the Vermont Supreme Court observed:

The evidence here that claimant was argumentative, uncooperative, and resistant in the face of repeated requests to prioritize patient treatment plans and group sessions was sufficient to establish insubordination. Claimant also asserts that the evidence failed to support the Board's finding that claimant "refused" to carry out her responsibilities according to the employer's priorities. Both the executive director and the clinical supervisor clearly testified, however, that claimant rejected or ignored requests to complete patient plans more expeditiously and make the group sessions a top priority.

Mayo v. Department of Employment & Training, 2003 WL 25745697, at *2 (Vt. 2003) (Unpublished Entry Order).

Here, Superintendent clearly and repeatedly communicated to Employee that it was a District priority that she remove the June 10 post and that she work with the Superintendent to craft an appropriate follow-up/apology post. Superintendent advised her during the first telephone call on the morning of June 11 to remove the post, he advised her via texts that day to remove the post, and he advised her repeatedly during the audio-recorded telephone call during the afternoon of June 11 to remove the post. Further, she told her colleague via text on June 11: "David [B]aker wants me to take my post off Facebook. I'm refusing." Such a comment demonstrates that Employee herself understood the directives of the Superintendent. The length of time between Superintendent's first directive to her on the morning of June 11 and the time she finally did remove the post is significant, as the June 10 post's continued presence on her Facebook page was reasonably likely to continue causing harm to the District.

The cumulative evidence indicates that Employee understood the Superintendent's communications at least constituted a request that she remove the June 10 post, and her statement that she "refused" supports the conclusion that her failure to do so until roughly 10:45 P.M. on June 11 was insubordinate. Insubordination is clearly good cause for dismissal from employment.

Furthermore, the record in this proceeding documents that Employee lacks respect for the authority vested in the Superintendent. A superintendent and principal are not equal peers, but

Employee's tone and tenor in speaking with Superintendent on June 11 and 12 suggests she did not think that the case. She stated her disagreement and then, instead of conceding "You're the boss," she continued to refuse to follow his recommended course of action. Instead, Employee argued that she was basing her decision to maintain the post for some time on advice of other persons who are not her employer. She repeatedly falsely accused Superintendent of calling her and her husband "racists" when there is no evidence he did so and he explicitly pointed out that he did not do so.

While the Board does conclude Employee was insubordinate, it need not rely on this conclusion to support its determination that Superintendent has established that grounds # 5 is proved. The record in this proceeding documents that Employee lacks respect for the authority vested in the Superintendent and is unwilling to comply with reasonable guidance. Such behaviors are unacceptable for a school administrator and constitute good cause for dismissal, of which such an employee must be held to be on notice.

III. First Amendment Analysis

The parties have briefed the issue whether dismissal of Employee under the current circumstances would violate her First Amendment rights. The Board first notes it is not finding just cause for dismissal due solely to Employee's June 10 and June 11, 2020, Facebook posts. Even if Employee's Facebook posts arguably were protected by the First Amendment, her conduct under grounds # 3 and # 5 is sufficient on its own to establish just cause for dismissal.

To the extent necessary however, the Board does also conclude that disciplining Employee based on her June 10 and June 11 Facebook posts does not violate the First Amendment.

A court conducts a two-step inquiry to determine whether a public employee's speech is protected: "The first requires determining whether the employee spoke as a citizen on a matter of public concern." This step one inquiry in turn encompasses two separate subquestions: "(1) whether the subject of the employee's speech was a matter of public concern and (2) whether the employee spoke 'as a citizen' rather than solely as an employee." If the answer to either question is no, that is the end of the matter. If, however, both questions are answered in the affirmative, the court then proceeds to the second step of the inquiry, commonly referred to as the *Pickering* analysis: whether the relevant government entity "had an adequate justification for treating the employee differently from any other member of the public based on the government's needs as an employer."

Matthews v. City of New York, 779 F.3d 167, 172 (2d Cir. 2015) (citations omitted). The Board therefore reviews: (1) Whether Employee's speech was protected and, (2) If so, is discipline justified?

I(a) –Citizen/Employee Distinction

“Guided by the Supreme Court's decision in *Garcetti*, we ask two questions to determine whether a public employee speaks as a citizen: (A) did the speech fall outside of the employee's ‘official responsibilities,’ and (B) does a civilian analogue exist?” *Matthews*, 779 F.3d at 173. The Board concludes that Employee’s June 10 Facebook post was speech made as a citizen, while her June 11 Facebook post was speech made as an employee.

Official Responsibilities

Employee’s public expression on social media of her personal views on Black Lives Matter and related issues was not one of her job responsibilities as principal. See, e.g., *Denicolo v. Board of Education of City of New York*, 328 F.Supp.3d 204, 215 (S.D.N.Y. 2018) (“[I]f the employee goes outside of the established institutional channels in order to express a complaint or concern, the employee is speaking as a citizen”); *Thomas v. City of Blanchard*, 548 F.3d 1317, 1323–24 (10th Cir. 2008) (“The question under *Garcetti* is ... whether the speech was made pursuant to the employee's job duties, or in other words, whether it was ‘commissioned’ by the employer”) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418, 126 S.Ct. 1951, 164 L.Ed.2d 689 (2006)). Even though her post affected her work, as discussed *infra*, the Board therefore concludes that Employee’s June 10, 2020, Facebook post is speech that fell outside of her official responsibilities.

However, the Board reaches the opposite conclusion as to Employee’s June 11, 2020, Facebook post. As chronicled in detail above, Employee’s supervisor spoke at length about the importance of Employee posting an appropriate apology in place of the offensive June 10 post due to the severe and immediate impacts that post would have on the Windsor School community and Employee’s ability to serve as principal. Although Employee did not follow Superintendent’s guidance to consult prior to issuing a new post, the connection between her employer’s directive and her second post bring that second post within the sphere of her job responsibilities. See, e.g., District A ¶¶ 1, 6 (Employee’s contract indicating “The Employee shall perform all the duties required by the Employer for the position of Principal” and “Job duties and responsibilities shall be as designated by the Employer and may be modified at any time by the Employer.”).¹⁷

¹⁷ The Board does not find the contract covering June 2020 in the exhibits, but we presume that the same term appears in that contract as it did in prior contracts. See District at 130-149 (same terms appearing in prior contracts including Assistant Principal contracts).

Civilian Analogue

Posting to a personal Facebook account meets the “civilian analogue” criterion such that this factor weighs in favor of finding Employee’s posts, initially made to her personal Facebook page, were made as a citizen rather than an employee. Again however, the June 11, 2020, Facebook post was connected to direction from her supervisor, such that the Board does not find the vehicle being her personal Facebook page (as opposed to a School Facebook page, for instance) lessens the job-related nature of the issuance of the June 11 post.

1(b) – Speech on Matter of Public Concern

Whether speech is on a matter of public concern, which is a question of law, ... is to be answered by the court after examining the “content, form, and context of a given statement, as revealed by the whole record,” ... Nor does the fact that expressive conduct is public mean that its subject is a matter of public concern. ... To constitute speech on a matter of public concern, an employee's expression must “be fairly considered as relating to any matter of political, social, or other concern to the community.” ... Speech that, although touching on a topic of general importance, primarily concerns an issue that is “personal in nature and generally related to [the speaker's] own situation,” such as his or her assignments, promotion, or salary, does not address matters of public concern. ... [A] topic is a matter of public concern for First Amendment purposes if it is “of general interest,” or “of legitimate news interest,” or “of value and concern to the public at the time” of the speech.

Jackler v. Byrne, 658 F.3d 225, 235–36 (2d Cir. 2011) (citations omitted). The speaker’s motive is an important factor, but is not dispositive. See *Sousa v. Roque*, 578 F.3d 164, 175 (2d Cir. 2009) (“Whether or not speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record, ... and while motive surely may be one factor in making this determination, it is not, standing alone, dispositive or conclusive.”) (citation omitted); *Pappas v. Giuliani*, 290 F.3d 143, 153 (2d Cir. 2002) (“As this Court recently recognized, the court should focus on the motive of the speaker and attempt to determine whether the speech was calculated to redress personal grievances or whether it had a broader public purpose.”) (internal quotations and cites deleted).

As discussed previously in this decision, and despite testimony by Employee to the contrary, the Board has found the evidence clearly shows Employee’s June 10 post was made in reaction to what she perceived as personal criticisms directed toward her by community members. In other words, she issued the June 10 Facebook post because of being upset and frustrated by communications she received from Ms. Williams and Ms. Rockwood. Therefore, Employee’s motive was to air her personal grievances.

On the other hand, there is no evidence that her speech was intended to actually redress her personal grievances about perceived criticisms. In other words, there is no evidence that her motivation in making the June 10 post was to produce a particular tangible result in connection with her job. While her motive in making the post was personal interest rather than public interest, it was not the sort of personal interest which courts appear to find takes the June 10 post outside the sphere of “public concern.” As one district court within the Second Circuit has explained in a case where a school bus driver issued a Facebook post critical of a school board member who was running for a seat as a state legislator:

The Second Circuit has also clarified that its “previous cases suggesting that the speaker's motive might indicate that the speech is not on a matter of public concern have focused primarily on private motives related to employment grievances,” where the speaker wants to resolve a private issue within the workplace. *Reuland*, 460 F.3d at 417. But where the speech has “broader public purpose” and is not “calculated to redress personal grievances,” the existence of personal animus will not automatically deprive the speech of First Amendment protection. *Lewis*, 165 F.3d at 163-64.

Thibault v. Spino, 431 F.Supp.3d 1, 10–11 (D. Conn. 2019).

Based on the case law, the Board understands we must focus primarily on the content of the June 10 Facebook post to analyze whether it addresses a matter of public concern. Because the content presented in the post, on its face, addresses societal issues, the Board will assume, without deciding, that the post might possibly be viewed as addressing a matter of public concern.

Although the Board has concluded the June 11 Facebook post was issued pursuant to Employee’s job duties, such that no First Amendment protections can apply, the Board briefly addresses whether that second post addressed a matter of public concern. First, the Board concludes the Employee’s primary motive in issuing the June 11 Facebook post was to deflect blame on herself for the ill-considered June 10 post. The lack of a bona fide apology in the post supports this conclusion.

The content of the June 11 Facebook post is mixed. It predominantly does not broadly address matters of social concern, but rather is primarily couched as an explanation of why she did what she did, regardless of whether it is truthful. While that post does include the verbiage “I understand the struggles of the black lives community and stand with them in the fight against racism. Prejudice, discrimination and racism has no place in the world,” these statements appear within the context of her explanation for the content of the June 10 Facebook post. Balancing these facts, the Board will also assume without deciding that the content of the June 11 post, which purported to address the June 10 post, might possibly be viewed as generally addressing a matter of public concern.

2 – Adequate Justification for Dismissal

“A school board may terminate a school [employee] where the [employee]'s exercise of his or her First Amendment rights causes disruption to the school’s educational mission and operations.” 16B *McQuillin Mun. Corp.* § 46:80 Grounds— Miscellaneous (3d ed.). “A government employer may take an adverse employment action against a public employee for speech on matters of public concern if: (1) the employers’ prediction of the disruption that such speech will cause is reasonable; (2) the potential for disruption outweighs the value of the speech; and (3) the employer took the adverse employment action not in retaliation for the employee’s speech, but because of the potential for disruption.” *Johnson v. Ganim*, 342 F.3d 105, 116 (2d Cir. 2003).¹⁸

To satisfy *Pickering* and justify adverse action arising out of an employee's protected activity, the government has the burden to show that the employee's activity is disruptive to the internal operations of the governmental unit in question. *See Connick*, 461 U.S. at 150, 103 S.Ct. 1684; *see also Knight*, 275 F.3d at 164; *Lewis*, 165 F.3d at 163. The disruption must be significant enough so that it “impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships ... or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise.” *Rankin*, 483 U.S. at 388, 107 S.Ct. 2891.

Any actual disruption that has already occurred is of course a persuasive argument for the government that it has met its burden, but even a showing of probable future disruption may satisfy the balancing test, so long as such a prediction is reasonable. *See Waters*, 511 U.S. at 673, 114 S.Ct. 1878 (plurality opinion) (giving “substantial weight to government employers' reasonable predictions of disruption”); *Heil*, 147 F.3d at 109 (holding “government can prevail if it can show that it reasonably believed that the speech would potentially interfere with or disrupt the government's activities” in a manner outweighing employee's interests). ...

The content of the disruptive speech must also be considered. The more speech touches on matters of public concern, the greater the level of disruption the government must show. *Jeffries v. Harleston*, 52 F.3d 9, 13 (2d Cir. 1995). ...

¹⁸ It is likely that Employee has the burden to show by a preponderance of the evidence that her speech was entitled to First Amendment protection, and that Superintendent has the burden of showing that discipline is justified despite any such protection. *See, e.g., Board of County Com'rs, Wabaunsee County, Kan. v. Umbehr*, 116 S.Ct. 2342, 2347, 518 U.S. 668, 675 (1996) (“To prevail, an employee must prove that the conduct at issue was constitutionally protected, and that it was a substantial or motivating factor in the termination.”).

A final but important consideration in the balancing test is the nature of the employee's responsibilities. The level of protection afforded to an employee's activities will vary with the amount of authority and public accountability the employee's position entails. *See Rankin*, 483 U.S. at 390–91, 107 S.Ct. 2891. A position requiring confidentiality, policymaking, or public contact lessens the public employer's burden in firing an employee for expression that offends the employer. *See McEvoy*, 124 F.3d at 103.

Melzer v. Board of Education of City School Dist. of City of New York, 336 F.3d 185, 192, 197 (2d Cir. 2003).

“Insofar as self-interest is found to have motivated public-employee speech, the employee's expression is entitled to less weight in the *Pickering* balance than speech on matter of public concern intended to serve the public interest.” *Reuland v. Hynes*, 460 F.3d 409, 418 (2d Cir. 2006) (quoting *Barnard v. Jackson County*, 43 F.3d 1218, 1226 (8th Cir. 1995)). “Even if the potential disruption to the office outweighs the value of the speech, the employer may fire the employee only *because of* the potential disruption, and *not because of* the speech.” *Sheppard v. Beerman*, 94 F.3d 823, 827 (2d Cir. 1996) (emphasis in original).

The Board finds that the factors discussed in *Melzer* overwhelmingly weigh in support of concluding that dismissal is warranted discipline due to the extraordinarily disruptive effect of Employee’s Facebook posts. All three of the criteria listed in *Johnson, supra*, are met here:

(1) The Facebook posts have resulted in disruption and it is clearly reasonable to predict that further disruption will occur but for dismissal of Employee. Actual to-date disruption is sufficiently evidenced in the record, and the likelihood of further threatened disruption is discussed in section II(A)(2), *supra*.

The Board further notes the following relevant guidance from the *Munroe* case:

We accordingly agree with the Second and Seventh Circuits that it is generally appropriate to consider the reactions of students and parents to an educator's speech under the *Pickering* balancing test. ... *Melzer*, 336 F.3d at 199 (“Any disruption created by parents can be fairly characterized as internal disruption to the operation of the school, a factor which may be accounted for in the balancing test and which may outweigh a public employee's rights.”).

We find that Munroe's various expressions of hostility and disgust against her students would disrupt her duties as a high school teacher and the functioning of the School District.

While Employee's June 10 post here may not have risen to the level of expressions of "disgust" as to Black members of the Windsor School community, its language was certainly hostile in that it expressed verbiage associated with anti-inclusion rhetoric. However, speech need not rise to the level of "hostile" in order for the disruption it causes to outweigh any First Amendment protections which might attach to that speech. The key point is that the anti-inclusionary impacts on school community members is, as a matter of law, disruption to the school which outweighs the employee's interests.

(2) The potential for disruption outweighs the value of Employee's speech. This factor weighs heavily in favor of discipline because the Board has determined, based on the record, that Employee's speech was clearly motivated by her own personal self-interest rather than public interest, as discussed in detail in the Board's review whether the June 10 Facebook post regards a matter of public concern. Though the Board concluded that the June 10 post might meet the "public concern" test, the issue of Employee's motivation is also relevant to balancing of the parties' respective interests.

The District has a great interest in avoiding the disruption caused by Employee's posts, and it is reasonable to conclude such disruption will continue and increase if she were to return as principal. There is ample evidence in the record that racial equity and inclusion are important goals of the District, and it is self-evident that must be the case. Indeed, Employee's leadership position within the District makes her the employee whose speech on such matters has the most potential to cause disruption to the District's work regarding equity and inclusion. The fact that here it is the school principal who issued the offensive speech greatly reinforces the conclusion that Employee's personal interests in that speech are vastly outweighed by the District's interests.

Additionally, the Board of Education Rules setting forth administrator competencies make plain how disruptive Employee's speech is to the performance expectations which are part of her job as principal. Those competencies include that an education leader should nurture and sustain a school culture conducive to student learning and staff professional growth. They also include that a leader should promote the success of every learner by understanding, responding to, and influencing the political, social, and cultural context. Employee's June 10 Facebook post is antithetical to these competencies, which strongly suggests Employee's interest in her speech deserves very little weight.

The Board therefore concludes that the disruptive effects of Employee's June 10 and 11 Facebook posts, which effects would be sure to ripple further into many aspects of the Windsor School's operations and community were she to return as principal, clearly outweigh any free speech interests of Employee.

(3) The Board is dismissing Employee because of disruption resulting from her Facebook posts, not in retaliation for her posts. Its conclusion is based on the impacts to the Windsor School community. The record is well-documented that there has been extraordinary

turmoil, upset, and injury to members of that community which directly resulted from the Facebook posts, and it is reasonable to predict the occurrence of further such disruption. While the Board may disagree with the content of the Facebook posts, that disagreement is not the basis for its conclusion that good cause for dismissal exists here.

IV. Other Issues Raised by Employee

Employee's pre-filed testimony references the District's "Public Complaints About Personnel" policy on procedures for complaints against employees, and she claims the District did not observe that policy here. Employee PFT ¶¶ 128-129 (citing Employee 20 at 0118). First, on its face the policy does not appear to apply to complaints against a principal, as the principal is listed as an individual who shall review a complaint not resolved by an employee's immediate supervisor. Second, even if the policy could be ready to apply here, nothing in the policy can reasonably be read to suggest that the Board is restricted from taking disciplinary action under 16 V.S.A. § 243(d) when grounds for such discipline come to the attention of the Board by any means. The policy states that the Board's intent is that employee rights under a collective bargaining agreement and Vermont law are protected. Disciplinary action in this case violates neither.

Employee also notes in her pre-filed testimony that a text from Superintendent indicated her June 11, 2020, Facebook post was "a very good first step." See Hearing Transcript at 47:2-4.¹⁹ The Board disagrees that this evidence mitigates Employee's conduct in regard to (1) the potential for continuation of disruption caused by the failure to issue a proper apology post and (2) Employee's misjudgment in failing to coordinate with Superintendent on a replacement Facebook post.

One major reason is the inaccuracy of part of the June 11 post, where she wrote: "While self reflecting, researching, learning and trying to make myself more aware of the struggles of the BLM movement, I recently made a public post that unintentionally offended many people." Her June 10 post was not fueled by self-reflection etc., as has been reviewed at length in this decision. The second reason is that, although there was no explanation presented by the District for Superintendent's "very good first step" comment, the June 11 post clearly does not comport with the guidance Superintendent had given Employee on June 11 with regard to the need for a legitimate apology. As discussed previously, the Board subscribes to Superintendent's views that, as of June 11, a bona fide apology was necessary for the good of the District and for the possibility of preserving Employee's career as Windsor School principal. Hence, the Board disagrees that the June 11 post was a "very good first step."

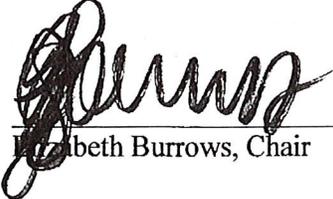
¹⁹ In the hearing, Employee's counsel states the post was made on June 12, but the Board accepts Employee's pre-filed testimony that it was posted late in the evening on June 11.

Conclusion

For the foregoing reasons, the Board finds just and sufficient cause under 16 V.S.A. § 243(d) to terminate Employee.

This decision signed in Windsor, Vermont this 14th day of October, 2020.

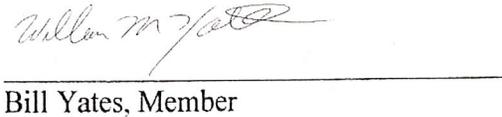
Members joining in this decision:


Elizabeth Burrows, Chair


Amy McMullen, Vice Chair


Kris Garnjost, Member


Nancy Pedrick, Member


Bill Yates, Member

NOTICE: This decision may be appealed to court in accordance with 16 V.S.A. § 243(d).

NOTICE OF DECISION EXHIBIT # 1

STIPULATION

This stipulation is between Tiffany Riley (“Riley”), by and through her counsel, William H. Meub, Esq. or Andrew Snow of MEUB ASSOCIATES, PLC, the Windsor PK-12 School Board (the “Board”), by and through their counsel, John Klesch of STITZEL, PAGE & FLETCHER, P.C., and the Windsor Southeast Supervisor Union School District (the “District”), by and through their counsel, Pietro Lynn of LYNN LYNN BLACKMAN & MANITSKY, P.C.

NOW COME the Parties to this Stipulation, by and through their respective counsel, and stipulate and agree to the following:

1. On July 27, 2020, the Board voted to terminate Principal Tiffany Riley pending an evidentiary hearing.
2. Riley and the District engaged in a mediation session on August 20, 2020 but they were unable to resolve the disputed matters at that session.
3. The Parties have agreed to hold an evidentiary termination hearing as required by 16 V.S.A. § 243(d) on September 10, 2020, from 9:00AM up to 6:00PM, if needed (the “Hearing”). The Hearing will be in executive session because 16 V.S.A. § 243(d) requires agreement by both parties to hold a public hearing and only Riley has agreed to a public session.
4. The Parties agree that the question to be decided at the Hearing is: “Is there just and sufficient cause under 16 V.S.A. § 243(d) to terminate Tiffany Riley as principal of the Windsor High School.”
5. The Parties agree this Stipulation is necessary so that the Hearing may be conducted in a manner that addresses the unique concerns and challenges to holding a hearing during the

current Covid-19 health pandemic and so that reasonable times are provided to properly completed the work necessary to accomplish the objectives of 16 V.S.A. § 243(d).

6. The Parties agree that to the extent anything is inconsistent with the requirements of 16 V.S.A. §243, the Parties do hereby waive any and all objections and agree that this Stipulation is designed to meet the intent of §243(d) and its requirements and the Parties agree that they can modify the requirements of §243(d) by agreement.
7. The Parties agree that the School Board has voted to terminate Riley pending a 16 V.S.A. § 243(d) hearing and the District and Riley stipulate that the District has provided written notice of the termination to Riley that includes 5 grounds for why there is just and sufficient cause to terminate Riley in accordance with Title 16 §243(d).
8. The Parties agree that Riley has made the necessary written demand for a §243(d) termination hearing in conformance with Title 16.
9. The Parties waive §243(d)'s requirement that a termination hearing occur within 15-days from receipt of the written demand, and the Parties agree that the §243(d) hearing shall be conducted consistent with this Stipulation.
10. The Parties agree to filing pre-filed direct testimony for the 243(d) hearing.
11. The Parties agree that Riley has requested more detailed explanations about the grounds for her termination, specifically grounds #4 and #5, and the Parties agree that a more definite statement of the grounds #4 and #5 shall be provided by the District no later than September 2, 2020, at 12:00PM (noon).
12. The Parties agree that Riley has requested a full and complete copy of her personnel file, and the District has agreed to produce the file no later than September 2, 2020, at 12:00PM (noon).

13. The Parties agree that Riley and the District shall exchange proposed exhibit lists and exhibits to the other side no later than Wednesday, September 2, 2020, at 5:00PM.
14. The Parties agree that, to the extent possible, Riley and the District shall stipulate to exhibits for the hearing, and in the event that either side objects to a proposed exhibit, they shall notify all Parties of their objection no later than Friday, September 4, 2020, at 12:00PM (noon). Each party's exhibit set, or a joint exhibit set, shall contain Exhibit identification numbers/letters as well as be contiguously bates numbered. Though the Parties shall make reasonable best efforts to include all exhibits necessary for hearing in the pre-hearing exhibit sets, Parties may offer additional exhibits through the close of the Hearing.
15. Any objections to the proposed exhibits shall be resolved by the Board Chair, or her designee, no later than Friday, September 4, 2020, at 5:00PM.
16. The Parties agree that the District and Riley shall file pre-file direct testimony with the Board's attorney John H. Klesch and shall provide the opposing side with pre-filed direct testimony no later than Tuesday, September 8, 2020 at 12:00PM (noon). The Board reserves the right to introduce officially-noticed facts into the record prior to the beginning of the Hearing, in which case the parties shall be notified and have an opportunity to comment on, and or note objections thereto, during the September 10 Hearing.
17. All pre-filed direct testimony shall have an affirmation from the witness swearing that the testimony provided is true and based on their personal knowledge.
18. The Parties agree to identify any witnesses that need to be cross-examined as part of the Hearing on or before September 9, 2020, at 12:00PM (noon).

19. The Parties agree that either Riley or the District may submit a legal memorandum on or before September 9, 2020 at 5:00 p.m.
20. The Parties agree that the Hearing shall be held remotely via video conference.
21. The Parties agree that a court reporter shall be retained at the expense of the District to make a stenographic recording of the Hearing. In the event any party wishes to introduce the record of the Hearing in a judicial proceeding, the parties may agree on bearing or sharing costs to do so, but, in the event of no agreement, the party wishing to do so shall incur the additional cost (if any) of the court reporter providing a transcript, and the parties shall either stipulate to, or the Board shall provide to the Court, a copy, certified to be genuine and authentic, of the pre-filed testimony, exhibits, noticed facts (if any), legal memoranda (if any), and decision. The Board shall also reasonably attempt to create and preserve an electronic recording of the Hearing which shall be made available to the parties upon request, but neither the Board nor the District shall be accountable if such effort is unsuccessful.
22. The Parties agree that at the Hearing, it shall be the role of the Superintendent of the School District to present evidence of just and sufficient cause for termination. The Parties agree that a written decision shall be rendered by the Board no later than September 30, 2020, at 3:00PM.
23. The Parties agree that Tiffany Riley shall remain on paid administrative leave, including benefits, until a final decision is rendered by the Board following the Hearing.
24. The Parties agree that this stipulation is not a waiver of any of the claims made in the lawsuit Riley has filed, Case No. 5:20-cv-108.

DATED at Rutland, Vermont this 4th day of September 2020.

MEUB ASSOCIATES, PLC

By: /s/ Andrew J. Snow
Andrew J. Snow, Esq.
Attorneys for Tiffany Riley

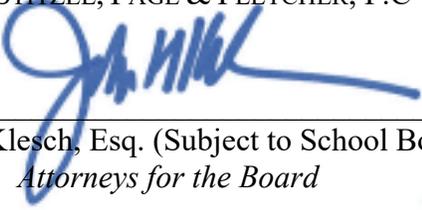
DATED at Burlington, Vermont this _____ day of September 2020.

LYNN, LYNN, BLACKMAN & MANITSKY, PC

By: _____
Pietro J. Lynn, Esq.
Attorneys for the District

DATED at Burlington, Vermont this 3rd day of September 2020.

STITZEL, PAGE & FLETCHER, P.C

By: 
John Klesch, Esq. (Subject to School Board Ratification)
Attorneys for the Board

DATED at Rutland, Vermont this ____ day of September 2020.

MEUB ASSOCIATES, PLC

By: _____
Andrew J. Snow, Esq.
Attorneys for Tiffany Riley

DATED at Burlington, Vermont this ____ day of September 2020.

LYNN, LYNN, BLACKMAN & MANITSKY, PC

By: _____
Pietro J. Lynn, Esq.
Attorneys for the District

DATED at Burlington, Vermont this 3rd day of September 2020.

STITZEL, PAGE & FLETCHER, P.C

By: _____
John Klesch, Esq. (Subject to School Board Ratification)
Attorneys for the Board