

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

v

Judge Mark A. Goldsmith
Magistrate David R. Grand
No. 22-12313

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and ELIZABETH
PYDEN,

Defendants.

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DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to the Local Rules and the Court's Practice Guidelines, the parties discussed filing joint motions for summary judgment. Neither party concurred in the opposing party's motion.

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INTRODUCTION

“It would be the height of irony, indeed, if mere speech, in response to speech, could constitute a First Amendment violation.” *Greisen v. Hanke*, 925 F.3d 1097, 1113 (9th Cir. 2019)(internal citations omitted).

Political Cartoonist Angelo Lopez captured the essence of this lawsuit well. Plaintiff shared her views in an acerbic manner; she did so in a way that likely constituted legal harassment, and she did so in a way that made individual school board members afraid for their safety. Then, when two school board members shared their concerns about Plaintiff’s conduct, she filed suit alleging that they violated her First Amendment Rights. Plaintiff may be free to speak in an offensive and uncivil way.¹ However, the natural consequence of such speech is that others may raise concerns, which the First Amendment protects. As such, this lawsuit should be dismissed.



¹ Defendants do not concede that Plaintiff’s speech was “protected speech”; however, this Motion is focused on other legal arguments.

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STATEMENT OF ISSUES PRESENTED AND MOST CONTROLLING AUTHORITY

Issue One: Was the First Amendment violated where the Plaintiff alleges words alone, and no other consequences, are an actionable adverse action? **NO.**

Most Controlling Authority

- *Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc) (per curiam)(“A retaliation claim essentially entails three elements: (1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) ... the adverse action was motivated at least in part by the plaintiff's protected conduct”); *Wurzelbacher v. Jones–Kelley*, 675 F.3d 580, 583 (6th Cir. 2012); *Thompson v. Ohio State Univ.*, 92 F. Supp. 3d 719, 733 (S.D. Ohio 2015), aff'd, 639 F. App'x 333 (6th Cir. 2016); *MacIntosh v. Clous*, 69 F. 4th 309, 315 (6th Cir. 2023).
- *Moore v. Shelby Cnty., Kentucky*, 369 F. Supp. 3d 802, 807 (E.D. Ky 2019)(holding that plaintiff suffered no “adverse action” when she was required to make appointments to view videos, when certain videos she had requested were deleted, and when she was prohibited from volunteering at the animal shelter).

Issue Two: Are Defendants entitled to Qualified Immunity where their conduct does not violate a “clearly established” constitutional right? **YES.**

Most Controlling Authority

- *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018)(holding that, to overcome a qualified immunity defense, the burden is on the plaintiff to show (1) that government officials violated a constitutional right and (2) that the unconstitutionality of their conduct was clearly established when they acted).
- *Binay v. Bettendorf*, 601 F.3d 640, 647 (6th Cir. 2010)(“Qualified immunity is an absolute defense to § 1983 claims”).
- *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)(holding that government officials are entitled to qualified immunity if their conduct does not violate a “clearly established” constitutional right); *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2011); *City of Tahlequah, Oklahoma v. Bond*, 142 S. Ct. 9, 11 (2021); *Stoudemire v. Michigan Dep't of Corr.*, 705 F.3d 560, 570 (6th Cir. 2013)(“qualified immunity must be assessed in the context of each individual's *specific* conduct”); *Kollaritsch v. Michigan State Univ.*, 944 F.3d 613, 626 (6th Cir. 2019); *Stewart v. City of Euclid, Ohio*, 970 F.3d 667, 674-75 (6th Cir. 2020).

Issue Three: Should the District be dismissed from the lawsuit under *Monell* where no constitutional violation occurred, the right at issue is not clearly established and

where Plaintiff cannot cite to a custom or policy that authorizes the retaliation against community members for exercising protected speech? **YES.**

Most Controlling Authority

- *Monell v. Dep't of Soc. Serv. Of City of New York*, 436 U.S. 658 (1978)(holding that local governments and municipalities can only be liable if a constitutional violation was caused by an official policy, custom, or practice); *Graves v. Mahoning Cty.*, 821 F.3d 772, 776 (6th Cir. 2016).
- *Heyerman v. Cty. of Calhoun*, 680 F.3d 642, 648 (6th Cir. 2012)(holding that municipal liability attaches “only” if “a custom, policy, or practice attributable to the municipality was the ‘moving force’ behind the violation of the plaintiff’s constitutional rights”); *Vereecke v. Huron Valley Sch. Dist.*, 609 F.3d 392, 403 (6th Cir.2010)(holding that that the plaintiff must “(1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy,” not just an injury); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481–83, 106 S. Ct. 1292, 1299–300, 89 L. Ed. 2d 452 (1986)(holding that liability only attaches where the decisionmaker possess final authority to establish government policy).
- *Doe v. Claiborne Cnty.*, 103 F.3d 495, 507-509 (6th Cir. 1996)(holding that, to establish liability under § 1983, a “custom” must “be so permanent and well

settled as to constitute a custom or usage with the force of law”; plaintiff must establish that the district had a policy of “always” being deliberately indifferent to unconstitutional actions).

STATEMENT OF MATERIAL FACTS

THE PARTIES

1. Plaintiff was a police officer at Harper Woods Police Department, and she had children in attendance at Chippewa Valley Schools through school of choice.
(Exhibit A: PI's dep at 4 and 6.)
2. Plaintiff is a participant in Moms for Liberty. (*Id.* at 30-31.)
3. Moms for Liberty has been named an "extremist" organization by the Southern Poverty Law Center. See <https://www.npr.org/2023/06/07/1180486760/splc-moms-for-liberty-extremist-group>;
see also <https://thehill.com/opinion/education/4086179-six-reasons-why-moms-for-liberty-is-an-extremist-organization/>(explaining that "prominent members of Moms for Liberty have close ties to the Proud Boys, Three Percenters, QAnon and white Christian nationalists" and that a Moms for Liberty newsletter "recently carried a quote from Adolf Hitler: 'He alone, who OWNS the youth, gains the future.'")
4. As explained by Plaintiff, Moms for Liberty wanted in person school during the COVID Pandemic, and further argued that face masks were a violation of personal liberty. (**Exhibit A: PI's dep at 30-31.**) As will be discussed below, Plaintiff argued that being required to wear a mask during COVID was analogous to Nazi Germany forcing Jews to wear stars.

5. Since this lawsuit, Plaintiff accepted a new job working at the Warren Police Department, where she has a higher salary and works with her husband. (**Exhibit A: Pl's Dep at 6.**)
6. Plaintiff no longer has children attending Chippewa Valley Schools, nor does she live within the District's boundary. (*Id.* at **21-22.**)
7. Plaintiff has sued former Board Members Frank Bednard and Beth Pyden.
8. Ms. Pyden is an attorney, and Mr. Bednard is a retired law enforcement officer. (**Exhibit B: Pyden Affidavit at ¶¶ 2-3; Exhibit C: Bednard Affidavit at ¶¶ 2-3, 10.**)
9. Plaintiff also inappropriately named the Chippewa Valley Schools Board of Education in this suit. The party is correctly designated on the above caption as the District itself. *See* (**DE# 23, Page ID.207, fn 1**)("Because Hernden does not dispute the District's contention that the Board is not itself a proper party, the Court agrees that the proper entity to be subject to this suit is the District, not the Board.")
10. Plaintiff suggested that Mr. Bednard, as the former Board President, could adopt Board Policy on his own. (**Exhibit A: Pl's dep 53.**) That is untrue. Board Members testified as follows:
 - a. "The District Board President has no authority to adopt policy outside a Board resolution and/or vote." (**Exhibit B: Pyden Affidavit at ¶¶ 22-23;**

Exhibit C: Bednard Affidavit at ¶¶ 21-22; Exhibit E: Pearl Affidavit at ¶¶ 4-5; Exhibit F: Aquino Affidavit at ¶¶ 5-6; Exhibit G: Sobah Affidavit at ¶¶ 4-5; Exhibit H: Wade Affidavit at ¶¶ 4-5; Exhibit I: Gura Affidavit at ¶¶ 4-5; Exhibit J: King Affidavit at ¶¶ 4-5.)

- b. “While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.” (*Id.*)

FACTUAL BACKGROUND

11. During the COVID Pandemic, “[l]ocal school officials across the United States [we]re being inundated with threats of violence and other hostile messages from anonymous harassers nationwide, fueled by anger over culture-war issues. Reuters found 220 examples of such intimidation in a sampling of districts.”²

12. As a result of this nationwide problem, the United States Attorney General issued a memorandum encouraging school boards to report behavior that could constitute harassment or threats. *See (DE #1 Compl. Ex. C, Page ID.27.)*

13. Against this backdrop, Plaintiff admittedly had “heated” interactions with the District’s Board of Education regarding masking and its efforts to keep students safe. (*DE #1 Compl. ¶ 18.*)

² <https://www.reuters.com/investigates/special-report/usa-education-threats/>

14.As an example, Plaintiff sent numerous emails, including the below, (**DE #1 Compl. Ex. B, Page ID.24**), as follows:

Once again, law on parents side. Maybe a lil more due care and caution at the next meeting Frank. You know, when you let your hatred you have for me take hold and you interrupt me.
1st 2 were free...

15.The above email indicates Plaintiff warned a board member to exercise “due care and caution” and then threatened that the “1st 2 [interruptions?] were free. . . .”
(Id.)

16.Mr. Bednard testified that, at a Board meeting on September 13, 2021, Plaintiff participated in public comment. He immediately observed that Plaintiff’s demeanor was much more serious than when normally addressing the Board. She seemed “very angry and very agitated.” Plaintiff’s public comment to the Board began with a history of the publication of Adolf Hitler’s *Mein Kampf* and a description of how Nazi Germany labeled Jewish individuals with “yellow badges.” As these comments went on for some time and appeared to be irrelevant to District matters, Mr. Bednard attempted to direct the Plaintiff to explain how this commentary related to the District. Plaintiff continued, telling a story about a family member. When Mr. Bednard again attempted to direct Plaintiff to address District matters, she yelled several times in response that she was getting to her point. The Plaintiff proceeded to tell the Board that, by having students wear masks, the Board was just like the Nazi's identifying Jewish individuals

with yellow badges. As of September 13, 2021, the District did not have a mask mandate in place. (**Exhibit C: Bednard Affidavit at ¶ 10.**)

17. As a retired Macomb Sheriff Command Officer, Mr. Bednard testified that he has more than 30 years of experience and training in reading an individual's behavior. During this public comment period, the **“Plaintiff's aggressive behavior shocked and scared [him].”** (*Id.*)

18. On October 4, 2021, Mr. Bednard viewed an ABC News report on the memorandum which reported that anyone could refer abusive, intimidating, or threatening behaviors at Board meetings to the Department of Justice (“DOJ”). (*Id.* at ¶¶ 11-12; **Exhibit A: Pl's Dep at 40.**)

19. After Plaintiff's constant and aggressive conduct towards the School Board and its individual members, she alleges that two school board members sent emails that violated her First Amendment Rights. (**DE # 1, Compl. at ¶¶ 36 and 53.**)

20. The first email was allegedly sent by former Board Member Beth Pyden to the Harper Woods Police Department (Plaintiff's employer), which alerted it to Plaintiff's conduct. (**DE # 1, Compl. Ex. A, Page ID.14 (Email dated December 11, 2020.)**)

21. Ms. Pyden testified that Plaintiff frequently mentioned her position as a public safety officer during her public comments. (**Exhibit B: Pyden Affidavit at ¶ 11.**)

22. The second email was allegedly sent by former Board Member Frank Bednard to the Department of Justice, which alerted the DOJ to Plaintiff and Moms for Liberty's threatening behavior. **(DE # 1, Compl. Ex. B, Page ID.23 (Email dated October 5, 2021.))**

23. As a society, we encourage school officials to report concerning behavior to law enforcement when appropriate. Certainly, the public policy is to not discourage reporting of concerns out of a fear of being sued. *See, e.g., MCL 722.623 and .633* (requiring certain school officials to make reports or face criminal liability.)

24. Likewise, even Plaintiff testified that people should report to the police if they believe a crime may have occurred. **(Exhibit A: PI's Dep at 40-42.)**

25. Board Members have testified that the Board did not authorize—or were even aware of—the above emails. **(Exhibit B: Pyden Affidavit at ¶¶ 14-23; Exhibit C: Bednard Affidavit at ¶¶ 16-25; Exhibit E: Pearl Affidavit at ¶¶ 6-7; Exhibit F: Aquino Affidavit at ¶¶ 7-12; Exhibit G: Sobah Affidavit at ¶¶ 6-7; Exhibit H: Wade Affidavit at ¶¶ 6-7; Exhibit I: Gura Affidavit at ¶¶ 6-7; Exhibit J: King Affidavit at ¶¶ 6-7.)**

26. In fact, Plaintiff admitted that she has no knowledge of whether these emails were discussed or authorized by the Board. **(Exhibit A: PI's Dep. at 54.)**

27. Mr. Bednard and Ms. Pyden have both testified that they sent the above communications unilaterally and did so because they had concerns that Plaintiff's

actions, combined with her words, could constitute harassment or threatening behavior. (**Exhibit B: Pyden Affidavit at ¶ 12; Exhibit C: Bednard Affidavit at ¶ 10.**)

28. Some of the harassment and threats endured by Ms. Pyden included:

- a. Plaintiff “[e]ngaging in on-line forums providing [Pyden’s] home address and telephone number. . . .” That “resulted in occupied cars parked in front of [her] home on at least two occasions. . . .” (**Exhibit B: Pyden Affidavit at ¶ 5.**)
- b. Pyden received “unmarked mail, including Nazi cartoons, being sent to [her] home. [She] also received telephone calls and messages from spammed numbers indicating that I should kill [her]self.” (*Id.*)
- c. Plaintiff “[Sent] messages to the Board and community wherein she demanded ‘action’ be taken against [Pyden].” (*Id.*)
- d. Plaintiff posted personal and hateful messages online about Pyden, which included hateful messages about her age, appearance, and family. (*Id.*)

29. The above emails—the emails subject to this lawsuit—were not discussed by the Board. (**Exhibit B: Pyden Affidavit at ¶¶ 14-21; Exhibit C: Bednard Affidavit at ¶¶ 15-25; Exhibit F: Aquino Affidavit at ¶¶ 7-12; Exhibit G: Sobah Affidavit at ¶¶ 6-10.**)

30. In fact, Board Members testified that they do not even recall seeing the emails.

(Id.)

31. Mr. Bednard and Ms. Pyden both decided that it was best to err on the side of caution, as hindsight can be unkind to school districts. (**Exhibit B: Pyden Affidavit at ¶¶ 14-21; Exhibit C: Bednard Affidavit at ¶¶ 15-25.**)

32. Neither Mr. Bednard nor Ms. Pyden sent their communications “because of” any protected speech—as they both expect and encourage opposing views—rather, they did so because they were concerned that Plaintiff, and Moms for Liberty, may pose a threat to the District’s safety. (**Exhibit C: Bednard Affidavit at ¶ 10**) (“Coupled with Plaintiff’s escalating aggressive behavior at Board meetings, I found this email to be threatening and intimidating and transmitted a copy of it with a complaint to the DOJ on October 5, 2021.”)

PLAINTIFF DID NOT SUFFER ANY ADVERSE ACTION

33. Plaintiff has not suffered any monetary damage. (**Exhibit A: Pl’s Dep at 42.**)

34. Plaintiff has not suffered any emotional damage. (*Id.* at 44.)

35. Plaintiff was not even aware that Mr. Bednard sent a communication to the DOJ until a friend informed her; her friend discovered this through a FOIA request. (*Id.* at 28.)

36. Plaintiff admitted that the DOJ has not taken any action or contacted her in any manner. (*Id.* at 29.)

37. Plaintiff admitted that she was only aware of Pyden's email to Harper Woods because her supervisor called her into an office, advised her that the email was received, reassured Plaintiff that there was no violation of departmental policy, and that no adverse employment action would be taken. (*Id.* at 10-11.)

38. The only adverse action Plaintiff alleges is the emails Former Board Members Bednard and Pyden sent—emails *they* have a First Amendment right to send. In fact, Plaintiff herself admitted that Ms. Pyden and Mr. Bednard have First Amendment Rights, too. (*Id.* at 38.)

39. Neither correspondence asked that any governmental action be taken against Plaintiff.

40. In fact, the email sent by Ms. Pyden to Harper Woods Police Department specifically indicated that she did not want Harper Woods to take any adverse employment action against Plaintiff. (DE # 1, Compl. Ex. A, Page ID.14 (Email dated December 11, 2020.))

PLAINTIFF'S SPEECH WAS NOT "CHILLED"

41. After the above emails were sent in December 2020 and October 2021, Plaintiff continued to appear at District Board Meetings and address the Board in an acerbic and uncivil manner. For example, she attended Board Meetings in February 2021, September 2021, October 2021, and April 2022. *See* (Exhibit A: Pl's Dep at 26; Exhibit D: Board Minutes Compilation.)

42.Plaintiff has not alleged, and there are no facts to suggest, that her speech was actually chilled as a result of the above emails. She continued to appear at Board meetings with Moms for Liberty and continued to send emails to Board Members.

PROCEDURAL HISTORY

43.The School District filed a Motion to Dismiss arguing that Plaintiff had not alleged that the District itself did anything. The Court granted this Motion in Part and Denied it in Part. (**DE #23, Opinion on Motion to Dismiss.**)

44.The Court held that Ms. Pyden’s email could not satisfy the requirements for liability under *Monell*. The Court, however, held that discovery was necessary as to whether the District itself was responsible for Mr. Bednard’s communication.

45.The issue of whether Defendants violated the First Amendment was not decided.

46.Since that time, Defendants deposed Plaintiff and obtained affidavits from District Board Members. Plaintiff opted not to take any depositions. This Motion for Summary Judgment now follows.

LEGAL ARGUMENT

I. SUMMARY JUDGMENT STANDARD

A court will grant a party's motion for summary judgment when the movant shows that “no genuine dispute as to any material fact” exists. Fed. R. Civ. P. 56(a). In reviewing the motion, the court must view all facts and inferences in the light

most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The moving party bears “the initial burden of showing the absence of a genuine issue of material fact as to an essential element of the non-movant’s case.” *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)) (internal quotation marks omitted). In making its determination, a court may consider the plausibility of the movant’s evidence. *Matsushita*, 475 U.S. at 587-88, 106 S.Ct. 1348. Summary judgment is also proper when the moving party shows that the non-moving party cannot meet its burden of proof. *Celotex*, 477 U.S. at 325, 106 S.Ct. 2548.

The non-moving party cannot merely rest on the pleadings in response to a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Instead, the non-moving party has an obligation to present “significant probative evidence” to show that “there is [more than] some metaphysical doubt as to the material facts.” *Moore v. Philip Morris Cos.*, 8 F.3d 335, 339–40 (6th Cir. 1993). The non-movant cannot withhold evidence until trial or rely on speculative possibilities that material issues of fact will appear later. 10B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2739 (3d ed. 1998).

II. LEGAL STANDARD FOR A FIRST AMENDMENT RETALIATION CLAIM

To establish a prima facie claim, a plaintiff must allege (1) she was engaged in constitutionally protected activity, (2) the defendants' actions caused her to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendants' adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct. *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002); *see also Thaddeus-X v. Blatter*, 175 F.3d 378, 394 (6th Cir. 1999) (en banc) (per curiam); *Wurzelbacher v. Jones–Kelley*, 675 F.3d 580, 583 (6th Cir. 2012); *Thompson v. Ohio State Univ.*, 92 F. Supp. 3d 719, 733 (S.D. Ohio 2015), *aff'd*, 639 F. App'x 333 (6th Cir. 2016); *MacIntosh v. Clous*, 69 F. 4th 309, 315 (6th Cir. 2023). Furthermore, **the plaintiff must show that [her] First Amendment rights were “actually chilled.”** *Curley v. Village of Suffern*, 268 F.3d 65, 73 (2d Cir. 2001); *see also Searle v. Red Creek Cent. Sch. Dist.*, No. 22-2049-CV, 2023 WL 3398137, at *2 (2d Cir. May 12, 2023).

Plaintiff cannot satisfy any of the above requirements. Federal courts have consistently held that words alone cannot constitute a cognizable injury in this context (citizen vis-à-vis public official, as opposed to public employee vis-à-vis public employer). Any other result would impair the First Amendment by quelling speech on matters of public concern. Second, the emails sent in this case—the subject of the lawsuit—were sent not because of protected speech; rather, they were

sent because Ms. Pyden and Mr. Bednard were concerned that Plaintiff's actions and words were escalating and could constitute legal harassment or threatening behavior. We want school officials to report such concerns. Lastly, Plaintiff's speech was not actually chilled. In her deposition, Plaintiff admitted that she was not even aware of Defendants' correspondence until much later, and she admits that she continued to address the Board of Education after the above events on multiple occasions.

A. FOR PURPOSES OF THE FIRST AMENDMENT, WORDS ALONE ARE NOT AN ACTIONABLE ADVERSE ACTION—AS THIS WOULD IMPAIR DEFENDANTS' OWN FIRST AMENDMENT RIGHTS.

Here, the allegations of adverse action are twofold. First, Plaintiff alleges Ms. Pyden sent an email to Harper Woods Police Department advising it that Plaintiff was behaving in a manner unbecoming a police officer and that her actions were possibly threatening and/or harassing. Second, Plaintiff argues Mr. Bednard's correspondence to the DOJ advising it of what he perceived as harassment was an adverse action. Plaintiff is wrong.

Where, as here, an official's speech is the alleged retaliation, that official's own First Amendment rights come into play. *See Bartley v. Taylor*, 25 F. Supp. 3d 521, 531-2 (M.D. Pa. 2014) (citing *Suarez Corp. Indus. v. McGraw*, 202 F. 3d 676, 685-9 (4th Cir. 2000)). And courts "have held that there is no retaliation when the government's alleged retaliatory action was government speech." *Id.* at 532 (quoting *Balt. Sun. Co. v. Ehrlich*, 437 F.3d 410, 417 (4th Cir. 2006)(citing *Benningfield v.*

City of Houston, 157 F.3d 369, 376-77 (5th Cir. 1998); *Harrington v. Harris*, 118 F.3d 359, 366 (5th Cir. 1997); *accord Kirby v. City of Elizabeth City*, 388 F.3d 440, 450 n. 8 (4th Cir. 2004)). Courts **“cannot afford one party his right to free speech while discounting the rights of the other party.”** *Hutchins v. Clarke*, 661 F.3d 947, 956 (7th Cir. 2011). As the First Circuit explained:

Courts have not been receptive to retaliation claims arising out of government speech. This cautious approach to limiting government speech is warranted. Not only do public officials have free speech rights, but they also have an obligation to speak out about matters of public concern.

Goldstein v. Galvin, 719 F.3d 16, 30 (1st Cir. 2013) (citations omitted). *See also IMAAW v. Haley*, 482 F. App'x 759, 764 (4th Cir. 2012)(“a plaintiff relying only on speech to fulfill the second element has a heavy burden to overcome.”); *Dixon v. Burke Cnty.*, 303 F.3d 1271, 1275 (11th Cir. 2002) (“[T]he imposition of civil liability in this case would necessarily mean that the government is punishing [Defendant] Craig for nothing more than voicing an opinion or recommendation.”) (emphasis in original); *Lynch v. Ackley*, 811 F.3d 569, 581 (2d Cir. 2016) (“The few arguably precedential rulings we have found have not tried to specify the limits of the First Amendment's protection of retaliatory speech by public officials, and neither do we.”); *Theyerl v. Manitowoc Cty.*, 2015 WL 7779210, at *2 (E.D. Wis. Dec. 2, 2015)(“To find actual retaliation, there has to be something much more than words.”)(emphasis added).

Because of an official's own speech rights, mere criticism is not actionable. The nature of the alleged retaliatory acts has particular significance where the public official's acts are in the form of speech. Not only is there an interest in having public officials fulfill their duties, a public official's own First Amendment speech rights are implicated. Thus, where a public official's alleged retaliation is cited as speech, in the absence of a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will imminently follow, such speech does not adversely affect a citizen's First Amendment rights, even if defamatory. The requirement that public official's speech include a threat, coercion, or intimidation, to adversely affect a citizen's First Amendment rights recognizes that a balance must be struck between the citizen's right to exercise her First Amendment rights and the public official's personal First Amendment rights, as well as his or her duty to the public to speak out about matters of public concern. *Suarez v. McGraw*, 202 F.3d 676, 688 (4th Cir. 2000).

The above is also true, even if the criticism or remark is made with malicious intent. *Baltimore Sun v. Ehrlich*, 437 F.3d 410, 420 (4th Cir. 2006) (“Of course, a public official's malicious intent, taken alone, cannot amount to a retaliatory response.”) Many courts have reached the same conclusion. *See R.C. Maxwell v. Borough of New Hope*, 735 F.2d 85, 86-89 (3d Cir. 1984); *Penthouse v. Meese*, 939 F.2d 1011, 1015 (D.C. Cir. 1991) (“[T]he Supreme Court has never found a

government abridgement of First Amendment rights in the absence of some actual or threatened imposition of governmental power or sanction.”); *Hammerhead Enterprises v. Brezenoff*, 707 F.2d 33, 39 (2d Cir. 1983) (“[S]tatements made by public officials will require courts to draw fine lines between permissible expressions of personal opinion and implied threats to employ coercive state power to stifle protected speech.”); *Colson v. Grohman*, 174 F.3d 498, 513 (5th Cir. 1999)(“**retaliatory criticisms, investigations, and false accusations that do not lead to some more tangible adverse action are not actionable under § 1983.**”); *Zherka v. Amicone*, 634 F.3d 642, 646 (2d Cir. 2011)(in “speech against speech” cases, **plaintiff must either demonstrate actual chilling of their speech or actual harm, such as the denial of a contract**); *Lakkis v. Lahovski*, 994 F. Supp. 2d 624, 633 (M.D. Pa. 2014)(**internal investigation is not sufficient adverse action**); *see also Herman v. Hosterman*, No. 1:11-CV-898, 2011 WL 4974184, at *3 (M.D. Pa. Oct. 19, 2011)(“[D]e minimis responses to protected speech such as criticism, false accusations, or verbal reprimands do not rise to the level of actionable retaliation.”).

In *Harmon v. Beaumont Indep. Sch. Dist.*, No. 1-12-CV-571, 2014 WL 11498077, at *5 (E.D. Tex. Apr. 7, 2014), *aff'd*, 591 F. App'x 292 (5th Cir. 2015), a public official called the plaintiff’s employer to report concerns. The court held that a phone call to the Texas Workforce Commission was not actionable because the call “resulted in no adverse consequences for Plaintiff Harmon, and indeed, no

consequence other than discussion with her supervisor. This would not chill a person of ordinary firmness.”

White v. Taylor by & through City of Turner Police Dep't, No. 6:18-CV-01909-MC, 2019 WL 2166532, at *4–5 (D. Or. May 17, 2019), is also analogous to the present dispute. Plaintiff Christopher White was a deputy sheriff at the Marion County Sheriff's Office. He previously worked as a police officer for the City of Turner Police Department in Oregon. Mr. White sued the City of Turner and two of its employees for allegedly filing a libelous complaint with the Marion County Sheriff in retaliation for critical statements Mr. White made about his former employer.

In dismissing the lawsuit, the federal court held that “a public official's defamatory statements made in retaliation for protected speech—including statements made directly to the speaker's employer—are generally not actionable under the First Amendment.” *Id.* at *4. (citing *Gini v. Las Vegas Metro. Police Dep't*, 40 F.3d 1041, 1045 (9th Cir. 1994)). This is true even if the defamation seriously harms the speaker's reputation or results in loss of her job. *Id.* Although Mr. White argued that lodging a formal complaint with his employer constituted a standalone “state action” affecting his “relationship or status with the state,” Defendant's complaint was “merely non-coercive speech which *itself* could not change Mr.

White's relationship or status with the state; rather, it was directed toward and prompted *another* government actor to do so.” *Id.* at *5 (emphasis in original).

In *Gini*, the Ninth Circuit held that a local police officer's defamatory statements made directly to the plaintiff's federal employer were not actionable under the First Amendment, even though the plaintiff lost her job. 40 F.3d at 1044-45. The same was true in *Mulligan v. Nichols*, where the plaintiff lost his job after city and police union officials leaked damaging information about him to members of the media. 835 F.3d 983, 988-91 (9th Cir. 2016). Instead, to support a retaliation claim based on speech-versus-speech, a plaintiff must show that (1) the defendant “ma[d]e [a] decision or [took a] state action affecting [her] rights, benefits, relationship or status with the state;” (2) she was denied or lost “a valuable governmental benefit or privilege;” or (3) the defendant's speech included a “threat, coercion, or intimidation” suggesting that “punishment, sanction, or adverse regulatory action” would imminently follow. *Id.* at 989-90 (citations and quotation marks omitted).

In *Moore v. Shelby Cnty., Kentucky*, a community member was vocal at open meetings. Afterwards, she alleged she was retaliated against by “(1) being required to make appointments to view records in violation of Kentucky's Open Records Act; (2) the deletion of the videos Ms. Moore requested pursuant to Kentucky's Open Records Act; and (3) being prohibited from volunteering in Shelby County Animal

Shelter.” 369 F. Supp. 3d 802, 807 (E.D. Ky 2019). The court held that these did not constitute an actionable “adverse action” for purposes of § 1983 and the First Amendment, even though there were tangible adverse impacts on her.

In the present case, Ms. Pyden’s email was protected First Amendment speech. There was no threat or coercion. In fact, **the opposite is true**. Ms. Pyden **specifically said she did not expect any adverse action to be taken against Plaintiff in her email to the Harper Woods Police Department. (DE #1 Compl. Ex. B, Page ID.24.)** Furthermore, this email was sent on December 11, 2020, and Plaintiff learned of it shortly thereafter when she was advised by her employer that no adverse action would be taken. **(Exhibit A: PI’s Dep at 10-11.)** Plaintiff then proceeded to attend multiple school board meetings, which shows that her speech was not chilled in any manner. **(Id. at 26; Exhibit D: Board Minutes Compilation.)** Similarly, Mr. Bednard took no adverse action against Plaintiff—other than heeding guidance from a DOJ memo that requested school officials report potential threatening behavior to the DOJ. These are not constitutionally protected “injuries.” In fact, Plaintiff candidly admitted in her deposition that she has suffered no damage—monetary or non-economic. **(Exhibit A: PI’s Dep at 42.)**

Here, any determination that elected board members violated Plaintiff’s First Amendment Rights would have the opposite effect of what this lawsuit purports to protect: it would chill speech. Public officials would lose the right to comment about

matters of public concern, which would be both paradoxical and dangerous public policy. Plaintiff thinks she can openly attack and criticize others; however, she ironically thinks she should be immune from criticism. That is not how the First Amendment was designed to work, and this lawsuit should be dismissed.

B. PLAINTIFF’S CLAIMS ARE BARRED BY QUALIFIED IMMUNITY.

Qualified immunity is an absolute defense to § 1983 claims. *Binay v. Bettendorf*, 601 F.3d 640, 647 (6th Cir. 2010). The doctrine is designed to protect “all but the plainly incompetent who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). These questions can be answered by the court as a matter of law. *See Dickerson v. McClellan*, 101 F.3d 1151, 1157 (6th Cir. 1996). Once a qualified immunity defense is raised, “the burden is on the plaintiff to demonstrate that the officials are not entitled to qualified immunity.” *Binay*, 601 F.3d at 647. To overcome a qualified-immunity defense, Plaintiffs must show: (1) that government officials violated a constitutional right and (2) that the unconstitutionality of their conduct was clearly established when they acted. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

Even if a question could be raised as to whether the individual Defendants’ actions violated Plaintiffs’ constitutional rights, that is not enough to impose liability. School Board Members are entitled to qualified immunity if their conduct does not violate a “clearly established” constitutional right. *Pearson v. Callahan*,

555 U.S. 223, 231 (2009). A “clearly established” right is one that is “sufficiently clear that *every* reasonable official would have understood that what he is doing violates that right.” *Reichle v. Howards*, 132 S. Ct. 2088, 2093 (2011). The Sixth Circuit recently found that the clearly established test is “a tough standard” to meet. *Ashford v. Raby*, 951 F.3d 798, 801 (6th Cir. 2020).

The “clearly established” analysis starts with examining existing precedent from the United States Supreme Court and Sixth Circuit for guiding authority on similar issues. *Stewart v. City of Euclid, Ohio*, 970 F.3d 667, 674-75 (6th Cir. 2020). The facts of the prior cases must be sufficiently similar to clearly establish the law. Recently, the Supreme Court once again reminded us “not to define clearly established law at a high level of generality.” *City of Tahlequah, Oklahoma v. Bond*, 142 S. Ct. 9, 11 (2021). For example, merely recognizing that the Fourth Amendment bars the police from using excessive force is too general and will “not clearly establish that force was excessive on a particular occasion.” *Beck v. Hamblen Cty. Tennessee*, 969 F.3d 592, 599 (6th Cir. 2020)

Rather, “the legal principal must clearly prohibit the official’s conduct in the **particular circumstances** before him. The rule’s contours must be so well defined that it is clear to a reasonable official that his conduct was unlawful **in the situation he confronted. This requires a high degree of specificity.**” *Kollaritsch v. Michigan State Univ.*, 944 F.3d 613, 626 (6th Cir. 2019)(emphasis added)(citing

Wesby, 138 S. Ct. at 589). The Sixth Circuit also clarified that “the fact pattern of the prior case must be similar enough to have given fair and clear warning to officers about what the law requires.” *Beck*, 969 F.3d at 599(internal citations omitted); *see also Stoudemire v. Michigan Dep't of Corr.*, 705 F.3d 560, 570 (6th Cir. 2013)(“qualified immunity must be assessed in the context of each individual's *specific* conduct.”).

The high degree of similarity in fact patterns required is illustrated in *Tahlequah*, a case involving the shooting death of a suspect. 142 S. Ct. 9. In *Tahlequah*, the Court drew a distinction between the details of two arrests, calling them “dramatically different” for purposes of the qualified immunity analysis:

The officers in *Allen* responded to a potential suicide call by sprinting toward a parked car, screaming at the suspect, and attempting to physically wrest a gun from his hands. Officers Girdner and Vick, by contrast, engaged in a conversation with Rollice, followed him into a garage at a distance of 6 to 10 feet, and did not yell until after he picked up a hammer. We cannot conclude that *Allen* “clearly established” that their conduct was reckless or that their ultimate use of force was unlawful.

Tahlequah, 142 S.Ct. at *12 (citing *Allen v. Muskogee*, 119 F.3d 837, 841 (10th Cir. 1997)). The above illustrates the high degree of specificity that is required to define clearly established law—i.e. the then-existing precedent must be so well defined that it is clear to any reasonable school district’s employee that Defendants’ conduct was unlawful in the situation they confronted.

Here, there are no Supreme Court or Sixth Circuit Opinions finding that an elected official cannot report a citizen's perceived harassment/threats to an outside agency for investigation. In fact, based on the case law above, Ms. Pyden and Mr. Bednard had the First Amendment Right to raise the concerns they raised, and they frankly should have. As such, they should be summarily dismissed from this lawsuit.

C. DEFENDANTS' MOTIVATION WAS NOT TO RETALIATE AGAINST PROTECTED SPEECH; RATHER, THEY WERE CONCERNED ABOUT WORDS AND CONDUCT THAT APPEARED THREATENING AND HARASSING.

As indicated in Ms. Pyden's email, she expects citizens will disagree with her and criticize her. However, she does not expect, and is not expected to tolerate, words or actions that could constitute harassment or threats. Likewise, Mr. Bednard always allowed Plaintiff to speak at Board Meetings; however, based on 30 years of law enforcement experience, he was concerned that her tone and body language poised a threat to the District. That is why the report was made. It was not made because Plaintiff criticized the District; rather, it was because she presented as being mentally unstable and dangerous; this is even more conspicuous when Plaintiff's affiliation with an "extremist" organization was at the forefront—an organization with ties to the Proud Boys and that had quoted Adolf Hitler.

Plaintiff did not bother to depose Defendants. As such, their testimony in this regard is wholly un rebutted. They did not report Plaintiff because of "protected

speech.” Rather, the constellation of her behavior, tone, and words appeared threatening/harassing.

D. THE DISTRICT CANNOT BE LIABLE UNDER *MONELL*.

The School District filed a 12(b)(6) Motion in this case arguing that Plaintiff had not alleged facts that could satisfy the requirements of *Monell* and its progeny. *Monell v. Dep’t of Soc. Serv. Of City of New York*, 436 U.S. 658 (1978). The Court granted this Motion in part and denied it in part. The Court held:

In sum, Hernden has failed to satisfactorily allege that liability extends to the District based on Pyden’s email. She has not alleged (i) the existence of a custom of tolerance of or acquiescence to “a clear and persistent pattern” of First Amendment violations, (ii) Board members’ notice of such violations, (iii) Board members’ tacit approval of such violations, or (iv) a causal connection between the supposed policy and Pyden’s decision to send an email. See *Claiborne*, 103 F.3d at 508. The Court grants the District’s motion to dismiss to the extent that Hernden’s claims for municipal liability are based on Pyden’s alleged unconstitutional act.

(DE # 23, Opinion & Order Granting in Part and Denying in Part Defendant’s

Motion to Dismiss, Page ID.219.) As to the Bednard email, the Court held the

following:

The Court finds it plausible that—based on Bednard (i) telling the DOJ that its assistance would be appreciated by “our board,” (ii) speaking in the first-person plural voice, (iii) signing the email as the Board’s president, and (iv) sharing the email with the Board after he sent it—the email “reflects a collective decision of the Board.” Compl. ¶ 60. These allegations suffice to maintain a claim against the District at the pleadings stage.

(Id. at Page ID.213.) The pleading stage has passed, and discovery has now closed. With the benefit of the record now before the Court, the District should be dismissed. As the attached affidavits show, the Board did not discuss, encourage, or direct Mr. Bednard to send any correspondence to the DOJ. Likewise, Board Members have testified that they did not even recall seeing his email. Additionally, as already determined, there is no official policy or custom of the District violating First Amendment rights.

1. If No Underlying Constitutional Violation, No Monell Liability.

“[When] no constitutional violation occurred, there can be no *Monell* claim against the [School District], regardless of its policies.” *Farinacci v. City of Garfield Hts.*, 2010 WL 1268068, at *5 (N.D. OH. 2010), *aff’d*, 461 Fed.Appx. 447 (6th Cir. 2012); *City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986)(A city “cannot be liable under § 1983 absent an underlying constitutional violation by its officers.”) Since there is no First Amendment violation in this case, there is no *Monell* liability. That should end the inquiry into *Monell* liability.

2. No Clearly Established Right Ends Monell Claim.

Monell claims also fail as a matter of law when the right at issue is not clearly established. *Arrington-Bey v. City of Bedford Heights, Ohio*, 858 F.3d 988, 994 (6th Cir. 2017)(“The absence of a clearly established right spells the end of this *Monell* claim.”) The Sixth Circuit has found that “[a] municipality cannot be deliberately

indifferent to the violation of a constitutional right—and thus liable under § 1983—if that right is not clearly established.” *Brennan v. Dawson*, 752 F. App'x 276, 287 (6th Cir. 2018), citing *Hagans v. Franklin Co. Sheriff's Office*, 695 F.3d 505, 511 (6th Cir. 2012)(“[A] municipal policymaker cannot exhibit fault rising to the level of deliberate indifference to a constitutional right when that right has not yet been clearly established.”); *J.H. v. Williamson Cty., Tennessee*, 951 F.3d 709, 721 (6th Cir. 2020)(“The absence of a clearly established right spells the end of [a plaintiff's] *Monell* claim.”).

Here, as discussed at length above, there is a vast body of federal law finding that governmental speech in response to speech—without more—cannot constitute a constitutional injury. Any other result would be ironic; Plaintiff's rights would be elevated above Defendants.

3. The Monell Elements are Lacking Here—Even if There Was a Clearly Established Constitutional Right Violated.

Assuming Plaintiff could establish a constitutional violation—which she cannot—that alone is not enough to hold the Board/District liable. *Graves v. Mahoning Cty.*, 821 F.3d 772, 776 (6th Cir. 2016); *see also Monell*, 436 U.S. at 658. Under § 1983, municipal liability attaches “only” if “a custom, policy, or practice attributable to the municipality was the ‘moving force’ behind the violation of the plaintiff's constitutional rights.” *Heyerman v. Cty. of Calhoun*, 680 F.3d 642, 648 (6th Cir. 2012) (quotation omitted). The Sixth Circuit has instructed that the plaintiff

must “(1) identify the municipal policy or custom, (2) connect the policy to the municipality, and (3) show that his particular injury was incurred due to execution of that policy,” not just an injury. *Vereecke v. Huron Valley Sch. Dist.*, 609 F.3d 392, 403 (6th Cir.2010) (quoting *Turner v. City of Taylor*, 412 F.3d 629, 639 (6th Cir. 2005)).

[N]ot every decision by municipal officers automatically subjects the municipality to § 1983 liability. Municipal liability attaches only where the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered. The fact that a particular official—even a policymaking official—has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion.” See, e.g., *Oklahoma City v. Tuttle*, 471 U.S., at 822–824, 105 S.Ct., at 2435–2436. The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.

Pembaur v. City of Cincinnati, 475 U.S. 469, 481–83, 106 S. Ct. 1292, 1299–300, 89 L. Ed. 2d 452 (1986) (emphasis added). “[A] municipality cannot be made liable by application of the doctrine of *respondeat superior*. . . .” *Id.* at 478.

In this case, Plaintiff has relied solely on two emails sent by two individual board members. However, no individual board member can bind the School District or promulgate Policy. It takes a quorum of the Board and a majority vote, which is then memorialized in minutes or a resolution. The Michigan Supreme Court has made this clear. *Tavener v. Elk Rapids Rural Agr. Sch. Dist.*, 341 Mich. 244, 251,

67 N.W.2d 136, 139 (1954)(a school board “resolution speaks for itself. . . . Defendant [school board] **speaks only through its minutes and resolutions.**”)

Here, Plaintiff does not factually claim that the school board has an official policy that authorizes the retaliation against community members for exercising protected speech. *See Doe v. Claiborne Cnty.*, 103 F.3d 495, 507 (6th Cir. 1996). To the contrary, the District Board of Education has adopted policies that expressly authorize persons to speak during public comment. In fact, the Board has specifically adopted a Policy providing that “[t]he Board of Education recognizes the value of public comment on educational issues and the importance of allowing members of the public to express themselves on District matters.”³ There is no suggestion that these Policies authorize Board members to engage in unconstitutional retaliation. Thus, whether Defendant District is liable turns on whether it had an unlawful “custom” of allowing constitutional violations.

To establish school board liability under § 1983, a “custom” must “be so permanent and well settled as to constitute a custom or usage with the force of law.” *Claiborne County*, 103 F.3d at 505. “In turn, the notion of ‘law’ must include ‘deeply embedded traditional ways of carrying out state policy.’” *Id.* at 507. A custom “must reflect a course of action deliberately chosen from among various alternatives.” *Id.*

³ Board Policy Bylaw 0167.3 – Public Participation at Board Meetings *available at* <http://go.boarddocs.com/mi/chip/Board.nsf/goto?open&id=CJCDBD34EEF7>.

at 508. Thus, “a ‘custom’ is a ‘legal institution’ not memorialized by written law.”

Id.

Further, to establish *Monell* liability against the school district, it is not enough to establish deliberate indifference to Plaintiff’s particular claim. Rather, to establish liability against a school district, the Sixth Circuit has found that the plaintiff must establish that the district had a policy of “always” being deliberately indifferent to unconstitutional actions. *Claiborne Cnty*, 103 F.3d at 508–09 (“There is an analytical distinction between being deliberately indifferent as to one particular incident, and having a ‘policy’ of **always** being deliberately indifferent to unconstitutional actions.”) In the present matter, no credible case of deliberate indifference has been pled or can be made. Further, sufficient facts have not been pled to support such claim.

Claiborne County is instructive in assessing Plaintiff’s § 1983 claim against the District in this case. *See Id.* at 508. In *Claiborne County*, parents brought complaints of sexual misconduct against a high school teacher during the 1989–90 school year, which culminated in a state agency investigation of nine allegations of abuse. *Id.* at 502. Although the investigation did not lead to criminal charges, the school Board did not renew the teacher’s contract for the 1990–91 school year. *Id.* After the teacher entered into an agreement with the state agency where it would not pursue charges against him, the school Board decided to re-hire the teacher in the

Fall of 1990 on the recommendation of the school district superintendent. *Id.* at 503. During the teacher's second stint of teaching, a board member personally supervised the teacher due to the previous agency investigation. *Id.* The board member received two complaints that the teacher had acted inappropriately around female students during the second stint, and it was later determined that the teacher had an abusive sexual relationship with a student from Fall 1991 until December 1992. *Id.*

After the illicit relationship was uncovered, the student filed a civil action, which included a *Monell* claim against the school board for having a “custom” of ignoring the unconstitutional behavior of its employees. *Id.* at 503–504. The Sixth Circuit held that the school board could not be held liable because the plaintiff never presented evidence that showed “that the School Board, as an official policymaking body, had a ‘custom’ that reflected a deliberate, intentional indifference to the sexual abuse of its students.” *Id.* at 508. The evidence may have demonstrated that the school board was reckless or negligent in inquiring further into the teacher's conduct, but the evidence did not demonstrate that the school board's “failure to act ... was the direct result of a custom in the sense that the School Board consciously never acted when confronted with its employees' egregious and obviously unconstitutional conduct.” *Id.*

Like the plaintiff's § 1983 complaint against the school board in *Claiborne County*, Plaintiff's claim against the District likewise fails. The Complaint does not

include facts that the School Board had any policy or custom responsible for depriving community members of their First Amendment Rights. In fact, as the Court noted in its prior Opinion, the Pyden email was not known to the Board. (**DE # 23, Opinion & Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss, Page ID.219.**) As such, there is only one alleged unconstitutional action, which cannot create a “custom.”

The only issue presented then is whether the Board itself sent or authorized Mr. Bednard’s email. It did not. Eight current and former Board Members have testified by affidavit to this effect. As such, as there was no policy, there is no custom of constitutional violations, and as the uncontroverted testimony indicates that the Board did not authorize or approve these emails, Plaintiff has failed to satisfy any of the *Monell* requirements. As such, the District should be dismissed.

CONCLUSION

For all the reasons stated above, this Court should grant Defendants’ Motion for Summary Judgment and dismiss Plaintiff’s lawsuit in its entirety with prejudice.

/s/TIMOTHY J. MULLINS
GIARMARCO, MULLINS & HORTON, PC
Attorney for Defendants

DATED: October 25, 2023

CERTIFICATE OF ELECTRONIC SERVICE

TIMOTHY J. MULLINS states that on October 25, 2023, he did serve a copy of **Defendants' Motion for Summary Judgment** via the United States District Court electronic transmission.

/s/TIMOTHY J. MULLINS

GIARMARCO, MULLINS & HORTON, PC

Attorney for Defendants

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Troy, MI 48084-5280

(248) 457-7020

tmullins@gmhlaw.com

P28021

Index of Exhibits

A. Plaintiff deposition transcript

B. Affidavit of Elizabeth Pyden

C. Affidavit of Frank Bednard

D. Compilation of Board Minutes

E. Affidavit of Kenneth Pearl

F. Affidavit of Denise Aquino

G. Affidavit of George Sobah

H. Affidavit of Bruce Wade

I. Affidavit of Christopher Gura

J. Affidavit of Shannon King

EXHIBIT A

In The Matter Of:
SANDRA HERNDEN v.
CHIPPEWA VALLEY SCHOOLS, ET AL

SANDRA HERNDEN
August 18, 2023

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA HERNDEN,

Plaintiff,

Case No.
22-12313

vs

Honorable
Mark A. Goldsmith

CHIPPEWA VALLEY SCHOOLS,
FRANK BEDNARD and
ELIZABETH PYDEN

Defendants.

DEPOSITION OF SANDRA HERNDEN

taken on Friday, August 18, 2023, at Giarmarco
Mullins & Horton, PC., 101 West Big Beaver, Tenth
Floor, Troy, Michigan at 12:21 p.m.

For the Plaintiff Mackinac Center for Public Policy
 Stephen A. Delie P80209
 140 West Main Street
 Midland, Michigan 48640
 989.631.0900

For the Defendants Giarmarco Mullins & Horton, PC
 Timothy J. Mullins P28021
 101 West Big Beaver Road
 Tenth Floor
 Troy, Michigan 48084
 248.457.7020

Also Present: Ronald Roberts.

REPORTER: Julie A. Catka, CSR-6530, CER-6530.

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I N D E X

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None marked.

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SANDRA HERNDEN

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Troy, Michigan
Friday, August 18, 2023
About 12:21 p.m.

- - -

COURT REPORTER: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

SANDRA HERNDEN,
after having been first duly sworn, was examined and testified as follows:

MR. MULLINS: Let the record reflect this is the deposition of Sandra Hernden, the Plaintiff, in the Eastern District United States Federal Court case of Hernden versus Chippewa Valley Schools, et al., being taken for all purposes under the Federal Rules of Civil Procedure.

E X A M I N A T I O N

BY MR. MULLINS:

Q. Ms. Hernden, my name is Tim Mullins. As you know, I represent the school and some of their board members. I'm going to ask you some questions. If at any time you don't understand the question or a word that I use, please feel free to say so and I'll try to repeat it or rephrase it, because she is taking down

SANDRA HERNDEN

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1 everything that we say and you, of course, want what
2 you say to be recorded accurately.

3 If at any time you're tired or you
4 need to use the restroom or whatever, just let us
5 know. We can take a break and we can do that. I
6 only ask that if I have a question posed, that we
7 answer the question before we take a break. Okay?

8 A. Okay.

9 Q. All right. Could you state your name for the record,
10 please?

11 A. Sandra Hernden.

12 Q. And what's your address?

13 A. 23190 Inwood Drive, Macomb, Michigan 48042.

14 Q. How long have you lived there?

15 A. About nine years.

16 Q. Is your home address within the Chippewa Valley
17 School District, or do I understand it to be outside?

18 A. It is outside. My children were school of choice
19 when they went to the district.

20 Q. We'll cover this. At some point in time they went to
21 L'Anse Creuse and then they came to Chippewa Valley?

22 A. No. They started in Chippewa Valley, and after all
23 of this with the exception of my oldest son, the two
24 younger ones were removed and put into the L'Anse
25 Creuse School District.

SANDRA HERNDEN

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1 Q. When you say removed, you mean you decided not to
2 have them be a student at Chippewa Valley and decided
3 to have them be in your home school district of
4 L'Anse Creuse?

5 A. That is correct.

6 Q. Where are you currently employed?

7 A. I am a police officer, Macomb County, Michigan.

8 Q. Okay. And do I understand that's within the
9 Municipality of Harper Woods?

10 A. It is not.

11 Q. Help me out there.

12 A. Harper Woods is in Wayne County.

13 Q. So, you're a police officer with which organization?

14 A. The Warren Police Department.

15 Q. Excuse me. And you've been employed with them for
16 how long?

17 A. Approximately two-and-a-half years.

18 Q. Who is your supervisor there?

19 A. Which supervisor in particular are you looking for?

20 Q. At Warren. Do you have a particular supervisor?

21 A. I have many supervisors.

22 Q. Okay. Well, let me back up. So how long in general,
23 how long have you been a police officer?

24 A. Twenty-five years.

25 Q. And where were you a police officer prior to Warren?

SANDRA HERNDEN

1 A. The City of Harper Woods.

2 Q. Okay. How was it that you came to leave the Harper
3 Woods Police Department and go to the Warren Police
4 Department? What motivated you to do so?

5 A. Well, part of it was what had happened and why we're
6 here today. The other is for pay and benefits.

7 Q. Okay. So, by your answer, is it fair for me to
8 assume that by going to the Warren Police Department
9 you got better pay and better benefits than you would
10 have had at Harper Woods?

11 A. Yes.

12 Q. You then went onto indicate that part of your
13 motivation was the dispute that's reflected in your
14 lawsuit at Chippewa Valley that motivated you to
15 move?

16 A. Yes.

17 Q. And if I'm -- let me ask you a couple of general, if
18 you will, orientation questions. The reason we're
19 here today, the lawsuit that you have filed is based
20 on your expression of beliefs as to how education
21 should or should not be rendered at Chippewa Valley
22 Schools while you were a police officer at Harper
23 Woods?

24 A. No.

25 Q. Okay. Well, to particularize it more, we're here

SANDRA HERNDEN

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1 today because you expressed your opinion as it
2 related to how COVID affected education, that being
3 masking or remote learning as opposed to non masking
4 and children being in school. That you expressed
5 your beliefs that masking was a bad idea or remote
6 learning was a bad idea and you wanted people to be
7 in school and other people --

8 A. I guess I'm not understanding how you're trying to
9 tie this question to my employment.

10 Q. Well, I'm backing off the employment right now and
11 I'm getting to the dispute, if you will, that you
12 have with some members of the school district. And
13 if that is very much of a generalization of what
14 brings us here today, if that's a fair
15 characterization or not?

16 A. Well, I believe the reason why we're here today is
17 that my First Amendment Rights were violated and I
18 was retaliated against.

19 Q. So, you left -- do you recall when your last day of
20 work at Harper Woods Police Department was?

21 A. March of 2021 I believe.

22 Q. And did you -- when did you, I presume that you
23 applied for employment at Warren Police Department?

24 A. Yes.

25 Q. And what was your first day of work at the Warren

SANDRA HERNDEN

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1 Police Department?

2 A. I believe it was April 5th of 2021.

3 Q. Had you been informed of and/or that you were getting
4 or accepted the job at Warren Police Department
5 before you resigned from your employment at Harper
6 Woods Police Department?

7 A. Yes.

8 Q. Were you, what was your position at the Warren Woods
9 Police Department when you left?

10 A. I was a detective in our auto theft unit and major
11 crimes.

12 Q. How long had you been at the detective level?

13 A. About eight years.

14 Q. Okay. Was it in that same area or same department?

15 A. I was assigned to a task force.

16 Q. When you say a task force, I guess to my
17 understanding of municipalities, that means you
18 worked with other police departments?

19 A. That's correct.

20 Q. That was a unit in and of itself?

21 A. Yes.

22 Q. In other words, different detectives from different
23 departments worked together to deal with that
24 specific type of crime problem?

25 A. Yes.

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1 Q. During that eight years, did you suffer any reduction
2 in your pay and benefits?

3 A. No.

4 Q. Were you subject to any disciplinary actions?

5 A. Yes.

6 Q. And what disciplinary action or actions were you
7 subjected to?

8 A. Why we're here today.

9 Q. But why don't you tell me specifically what
10 discipline Warren Woods --

11 A. You mean Harper Woods?

12 Q. Harper Woods. I'm sorry, subjected you to.

13 A. I was subjected to investigation.

14 Q. Okay. And who conducted that investigation?

15 A. I believe Chief Vince Smith and Deputy Chief Ted
16 Stager.

17 Q. And Ted --

18 A. Stager, S-t-a-g-e-r.

19 Q. And what was the nature of the investigation?

20 A. It was due to an email that was sent by Liz Pyden.

21 Q. And your general understanding of that email is what?

22 A. She did not like how I was addressing her, the
23 things that I was saying. She said that I was a
24 failed racist and demanded that my awards and
25 accolades be stripped of me that I worked hard for.

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1 And that she take place or be able to participate in
2 further educating me and disciplining me.

3 Q. So, the nature of the investigation was they informed
4 you they had received that email from Beth Pyden and
5 having received it, what was the nature or extent of
6 the investigation?

7 A. The investigation was brief. And I was made aware of
8 it after I was told I didn't violate any department
9 policy.

10 Q. So that was the end of the investigation?

11 A. Yes.

12 Q. Am I to understand from what you're saying, you were
13 called into a meeting on one particular day, they
14 advised you that they had received this and said they
15 didn't find anything wrong with it?

16 A. That's correct.

17 Q. So no loss cost sanction either in position, pay,
18 benefits or otherwise --

19 A. No.

20 Q. -- resulted from it.

21 Q. Do you recall when that meeting took place as best as
22 you can, month, year?

23 A. I believe it was in December of 2020 to the best that
24 I can recall.

25 Q. Okay. Were there any writings or memorandums, or did

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1 you receive any communication from the department of
2 any kind?

3 A. No.

4 Q. It was just you were verbally called into a meeting,
5 advised that they had received it, and that they
6 didn't think anything of it?

7 A. Correct.

8 Q. Prior to that meeting, had you inquired with or
9 applied for employment with the Warren Police
10 Department?

11 A. No.

12 Q. When did you first seek employment with the Warren
13 Police Department?

14 A. I want to say probably, maybe January or February of
15 '21.

16 Q. Okay. And what position did you attain at the Warren
17 Police Department?

18 A. Police officer.

19 Q. And the job that you had as a police officer, I think
20 you indicated when you started there paid higher
21 salary and benefits than what you had been getting at
22 Harper Woods?

23 A. Correct.

24 Q. And that was a motivating factor in you applying to
25 Warren?

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1 A. One of them, yes.

2 Q. What would any other of the motivating factors be?

3 A. Can I answer this?

4 MR. DELIE: Yeah.

5 A. Okay. Yeah. So I don't know how familiar you are
6 with the job that I do.

7 BY MR. MULLINS:

8 Q. As a police officer?

9 A. Yes.

10 Q. We represent probably about 12 cities here, so I've
11 worked a lot with police officers, but specifically I
12 don't know your job.

13 A. Once you plant an evil seed on failed racism, do you
14 not think that my bosses, my chief, my peers that I
15 worked with every day, once it got around a small
16 department, don't you believe that they looked at me
17 in a different way?

18 Q. Well --

19 A. Regardless of how long they had known me, because I
20 had been there almost 14 years.

21 Q. Well, I'm not here to answer questions, but I would
22 say no. I would say it depends.

23 A. No. Once you plant an evil seed, it can flourish.

24 Q. Okay. So did anything negative ever happen while you
25 were at Warren Woods?

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1 A. Harper Woods?

2 Q. I'm sorry. I should know better because of having
3 grown up right in that area. But did anything
4 negative occur? You indicated there was the meeting.
5 They didn't take any action or for that matter saw
6 that you had done anything wrong and apparently
7 didn't care about it. What other than that did they
8 indicate to you that it would negatively affect you
9 if you stayed at Harper Woods?

10 A. I could tell how I was being treated by my peers and
11 my supervisors.

12 Q. Okay. And?

13 A. Their attitudes towards me had changed.

14 Q. Can you specify that at all?

15 A. What would have been, what I consider as being a very
16 happy-go-lucky person and how they treated me in
17 kind, their communication with me became very short
18 and very distant.

19 Q. Could you indicate to me which of your superiors
20 became short and distant to you?

21 A. For one, the Chief of Police.

22 Q. Okay. That is?

23 A. Vince Smith.

24 Q. Mr. Smith?

25 A. Yes.

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1 Q. Who else?

2 A. The people that I worked with, other officers.

3 Q. Okay. Which other officers?

4 A. All of them.

5 Q. As in every police officer in the Harper Woods?

6 A. The ones that I saw, yes. I wasn't always in the
7 Harper Woods' office. I had two offices at the time,
8 but when I was there you can feel how different
9 people look at you.

10 Q. They were short and distant with you?

11 A. Yes.

12 Q. Anything else?

13 A. No.

14 Q. Can you identify any, or to what extent can you list
15 any officer that was more short or distant or
16 expressed that they thought less of you after that?

17 A. I don't even know if the officers are there anymore.

18 Q. I'm only interested --

19 A. I don't know. You want me to recall every officer
20 that worked there?

21 Q. No. I want you to recall any officer that would have
22 done or said anything to you that would indicate to
23 you that they thought less of you because of the
24 report that the chief had previously said to you, the
25 report that the chief had received and had indicated

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1 to you that he didn't think it mattered or amounted
2 to anything?

3 A. So you want specific names?

4 Q. Yeah.

5 A. I'm trying to think of who worked there at the time.
6 James Ruthenberg, Matt Claserto (ph), Glen Heeny
7 (ph), Robert Hill. I don't remember Charlene's last
8 name. Marva (ph) Miles.

9 I'm sorry. I can't remember everybody
10 that was there at the time.

11 Q. Okay. Just so we're clear for the record, I'm not
12 asking you to name everybody who you worked with at
13 that time, but I'm asking you to name everybody who
14 somehow would have expressed a reduced or lower
15 opinion of you than they had held before the email
16 was received that you met with the chief about.

17 A. Chief Smith for sure.

18 Q. Okay. You've identified him.

19 A. Uh-huh.

20 Q. And so the names that you just gave, are those people
21 that you're simply identifying as worked there, or
22 that you believe --

23 A. That I noticed a difference.

24 Q. And as to each of them, could you tell us what
25 specifically any of them said or did that led you to

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1 believe that they thought less of you than they had
2 before?

3 A. Conversations were different.

4 Q. Okay. Can you give me any specific example?

5 A. Very short, sweet, to the point.

6 Q. You're trying to tell me nobody wanted to talk to you
7 anymore?

8 A. Pretty much.

9 Q. Anything else?

10 A. No.

11 Q. That's the best you can specify any differential
12 difference in treatment that you thought indicated a
13 lack of respect on their part for you after this?

14 A. Yes.

15 Q. Okay. And you can't specify any other people?

16 A. No.

17 Q. And you couldn't repeat to me any specific
18 conversation?

19 A. No.

20 Q. Would there be any reflection in your file of this
21 meeting or conclusion on the part of the department?

22 A. I don't know.

23 Q. In the task force that you participated in, was the
24 Warren Police Department, were they part of that task
25 force?

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1 A. No, they were not.

2 Q. Okay. What led you to Warren, if you will, as to of
3 the many different police departments in the area to
4 apply there?

5 A. Because my husband works there.

6 Q. He's also a police officer there?

7 A. Yes, he is.

8 Q. Okay. You knew from the contract, if you will, or
9 the pay scale that he has -- is he a police officer
10 also?

11 A. Yes, he is.

12 Q. At what? Is he in an administration position or a
13 police officer?

14 A. No, he's a police officer.

15 Q. Okay. You knew from being married to him that the
16 pay and benefits were better at Warren?

17 A. And the environment.

18 Q. And you feel that the environment at Warren was
19 better?

20 A. Yes.

21 Q. In what way were you told or did you perceive the
22 environment at Warren to be better?

23 A. From what my husband had told me about how they treat
24 their officers. The officer camaraderie.

25 Q. During this period of time, were there any particular

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1 concerns or controversies at the Harper Woods City as
2 a whole or police department unrelated to any
3 interaction that you might have had with Chippewa
4 Valley Schools?

5 MR. DELIE: Objection relevance, but
6 you can answer the question.

7 A. I think prior to all of this happening we had an
8 in-custody death probably about six months before
9 this had happened.

10 BY MR. MULLINS:

11 Q. I'm sorry, a --

12 A. In custody death.

13 Q. That led to quite a bit of controversy and --

14 A. Protests.

15 Q. -- publicity and protests at the city hall and at the
16 police department --

17 A. Yes.

18 Q. -- and accusations being rendered against some
19 segments of the community, against the police
20 department?

21 A. Yes.

22 Q. Did it end in the change of any administrators in the
23 city or the police department?

24 A. Administrators in what aspect?

25 Q. Did anybody, was anybody dismissed or sanctioned or

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1 resigned from the department?

2 A. I do believe one, two, three. I believe three or
3 four people were put on administrative leave pending
4 investigation.

5 Q. To the extent you recall, the three or four people,
6 whom were they?

7 A. Avalon (ph) Owens, Maria Bell, Mike Pino (ph) and
8 John Borgage (ph). I'm not sure if there was anymore
9 or not.

10 Q. And the reason for them being put on leave to the
11 extent you have knowledge?

12 A. I don't have knowledge as to why.

13 Q. Was this controversy ongoing at the time you left the
14 department?

15 A. I believe so.

16 Q. Are you pleased with your current employment at
17 Warren as a police officer?

18 A. Yes.

19 Q. You've indicated increased pay and benefits. You're
20 happier to be at the Warren Police Department than
21 you were at the Harper Woods Police Department?

22 A. Yes. May I add something to the controversy that
23 also was surrounding that event for the in-custody
24 death?

25 Q. Yeah. You're talking about the death of a person in

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1 custody at Harper Woods at the police station?

2 A. Yes.

3 Q. Go ahead.

4 A. It was roughly two weeks after George Floyd, the
5 whole George Floyd incident.

6 Q. Okay.

7 A. So it was a perfect storm for what we went through as
8 a department, what we went through as police officers
9 as well in general from the public and from our
10 peers.

11 Q. Okay. Let's go back to Chippewa Valley. When was it
12 that you took your children out of Chippewa Valley
13 and returned them to L'Anse Creuse?

14 A. My oldest son graduated from Dakota in 2022.

15 Q. That's Chippewa Valley High School?

16 A. Dakota, yes. That's in Chippewa Valley School
17 District. I want to say roughly around 2021. I want
18 to say 2021, maybe 2020 from the best of my
19 knowledge. My two older ones did stay in the
20 district. Connor stayed until eighth grade. Our at
21 the time six-year-old, once we had heard they were
22 going to do virtual, we pulled him from the district
23 immediately and put him into L'Anse Creuse.

24 Q. Okay. If I understand the differentiation there,
25 Chippewa Valley was doing virtual, meaning, if you

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1 will, at home schooling with computers, and L'Anse
2 Creuse was attending in-person school?

3 A. Yes.

4 Q. So your motivation for transferring him was that you
5 wanted him to be, have an in-school learning
6 experience as opposed to, if you will, a computer?

7 A. A six-year-old is not going to learn a lot from a
8 computer.

9 Q. I understand the differing opinions.

10 A. Yeah.

11 Q. I'm just trying to get down to the facts that either
12 you could be at Chippewa Valley and he would learn
13 via computer at home. By taking him out of there and
14 putting him in L'Anse Creuse, he would have in-school
15 learning. And that's what motivated you to take him
16 out of Chippewa Valley and him being in your home
17 school district?

18 A. Yes.

19 Q. Moving further back in time understanding that you
20 lived within the boundaries of the L'Anse Creuse
21 School District, why was it that you had initially
22 chosen to have your children attend Chippewa Valley
23 as opposed to your home district, L'Anse Creuse?

24 A. When we first moved into the area I did call both
25 districts because I have a child under an IEP and it

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1 was about what support services he would get.

2 Additionally athletics did play part
3 of that decision as well. And when it came down to
4 it, after speaking to people in Chippewa Valley
5 versus L'Anse Creuse, my son Connor would have
6 received more support services in Chippewa Valley.

7 Q. Since you took him out of L'Anse Creuse (sic), your
8 children have remained at L'Anse Creuse?

9 A. Since I have taken them out of Chippewa?

10 Q. Yes.

11 A. Yes.

12 Q. And you're satisfied with that decision and
13 placement?

14 A. Absolutely.

15 Q. You consider it to have been beneficial for them?

16 A. Yes.

17 Q. I'm trying to not take up an excess amount of time.

18 I understand your conclusion is it's your belief

19 about an infringement upon your First Amendment

20 Rights that brings us here today. I understand all

21 of that. I'm trying to get into, if you will, the

22 factual prelude to that. And if I understand this

23 factually, we start off with the fact that various

24 school districts including Chippewa Valley during the

25 COVID, if you will, crisis, if you will, were shut

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1 down and were having remote learning as opposed to
2 in-person learning. That was a concern on your part;
3 is that right?

4 A. Yes.

5 Q. And if I further understand that you attended and I,
6 you know, a lot of this is laid out in your Complaint
7 and I understand it, but you along with others had
8 attended board meetings indicating your opposition to
9 a policy decision to have remote learning as opposed
10 to in-person learning?

11 A. Yes.

12 Q. You spoke at a number of school district board
13 meetings on that subject; is that right?

14 A. I don't honestly recall all of what the subjects were
15 that I spoke on.

16 Q. Okay.

17 A. But I would say at least once about in person.

18 Q. Okay. What, I guess to the extent you spoke on other
19 subjects, what do you recall the other subjects
20 being?

21 A. Transparency.

22 Q. When you say transparency, you mean transparency
23 about how the decision to be remote as opposed to in
24 person was arrived at?

25 A. Yes.

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1 Q. Go ahead.

2 A. Without looking at the meetings, there were a variety
3 of different things that I would talk about --

4 Q. Okay.

5 A. -- that were related to the school district.

6 Q. Okay. Just so I'm trying to understand as to
7 anything I might be missing, other than issues as
8 they related to, if you will, the institutional
9 reaction of the school district to how to administer
10 education given the COVID problem, other than that,
11 what, if anything, do you recall speaking about? I
12 mean general subject matter, if any.

13 A. With regards to masking, school closures?

14 Q. Correct.

15 A. I mean --

16 Q. I do understand you have talked about masking, school
17 closures and you're right. Go ahead.

18 A. I believe the first meeting that I spoke about was
19 what Liz Pyden had done to me and asking that the
20 board take corrective action because I cared about my
21 children.

22 Q. When you say that Liz Pyden asked that the board take
23 corrective action, what --

24 A. To be censured.

25 Q. Were you censured?

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1 A. No. For her to be censured.

2 Q. You had asked that Liz Pyden be censured?

3 A. Yes.

4 Q. Because?

5 A. She went to my employer attacking me, calling me a
6 failed racist in an attempt to take away my
7 livelihood.

8 Q. By that you're talking about the specific email --

9 A. Yes.

10 Q. -- that you set forth in your Complaint. That email
11 was sent by her to your department chief; correct?

12 A. Yes.

13 Q. And that's in your Complaint and I understand that
14 and it's been set forth in Discovery. Is there any
15 other communication by her to the Harper Woods Police
16 Department that you're aware of, if you will,
17 complaining about?

18 A. Not that they have told me.

19 Q. And not that you're otherwise aware of?

20 A. Correct.

21 Q. Just limited to that email, you asked that she be
22 censured. Any other subjects that you brought to the
23 attention of the school board that you can recall?

24 A. Other than policy? And refuting attacks from other
25 board members that I don't have children in the

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1 district and the educational value? No.

2 Q. Okay. So again I understand I'm giving
3 generalizations here. I think we both understand
4 that the board meeting that you were at, we kind of
5 know that they were, they've been recorded. You have
6 the recordings. We have the recordings. I'm just
7 generally trying to get past if there's any other
8 issue that I'm missing out on other than concerns
9 about how education would be rendered with COVID.
10 Like you said, masking, in person, distancing, that
11 kind of thing. Are there any other issues that were
12 not related to how the school would deal with the
13 COVID situation that you spoke to?

14 A. Not that I can recall.

15 Q. Fair enough. I don't expect you to remember all of
16 the dates, but if I understand it, you were at or
17 spoke at school board meetings September 13th, 2021;
18 October 4th, 2021; and April the 18th of 2022. Does
19 that sound about right to you?

20 A. I do believe there was one in February of 2021.

21 Q. Okay. That would be the period of time we're talking
22 about?

23 A. Yes.

24 Q. And your concern about your First Amendment Violation
25 would be the extent to which two board members

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1 reacted to your expression to the school board at
2 those school board meetings?

3 A. I'm sorry. Can you repeat that?

4 Q. Your concern, if you will, that brings us here today
5 is the reaction as I understand it of two school
6 board members to your comments that were made to the
7 school board at those school board meetings that we
8 just talked about?

9 A. I believe it's not just me showing up in person to
10 address grievances, but also through the emails that
11 were received.

12 Q. Okay. The email that went to Harper Woods?

13 A. Yes.

14 Q. What other emails?

15 A. As well as emails through communication that I tried
16 to have with the school district and the school
17 board.

18 Q. You exchanged some emails with Elizabeth Pyden?

19 A. With the board.

20 Q. Oh. Did you address them individually to people or?

21 A. They were all listed in an email. It was a group
22 email. Not one person to the best of my knowledge
23 was singled out.

24 Q. And so, if I read your Complaint, your concern as we
25 just talked about with your, with the email that was

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1 sent by Elizabeth Pyden to the Harper Woods Police
2 Department, your chief; correct?

3 A. Yes.

4 Q. And you're also concerned about an email that was
5 directed to the Department of Justice?

6 A. Yes.

7 Q. And that was to my understanding from Frank Bednard
8 to the Department of Justice?

9 A. And to the rest of the Board of Education including
10 Mr. Roberts.

11 Q. He copied his email to them?

12 A. I don't know if he copied his email to him.

13 Q. Okay. I guess I'm a little confused. As I read it,
14 and we can get it out if you want, he directs it to
15 the Department of Justice. And then the email itself
16 shows it to be copied to the superintendent and the
17 other members of the board.

18 A. Without looking at that email I can't testify to how
19 it was sent or distributed and the order that it was.

20 Q. And how was that it that you became aware of it?

21 A. Through Monica Radico (ph).

22 Q. Who is whom?

23 A. She's a friend of mine.

24 Q. How did she tell you she had become aware of it?

25 A. She had told me she had submitted a FOIA request at

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1 some point, I don't know when, regarding any parents
2 and I'm paraphrasing, that may have been referred to
3 the Department of Justice.

4 Q. And as far as you as an individual goes, what, if any
5 communication or contact have you ever received from
6 the Department of Justice in response to that email?

7 A. None.

8 Q. And what activity, if any, are you aware of that was
9 undertaken by the Department of Justice as a result
10 of that email?

11 A. None.

12 Q. And you haven't heard from anybody whatsoever that
13 anything ever came of that email?

14 A. Correct.

15 Q. And what impact, if any, did that email have upon you
16 individually?

17 A. None.

18 Q. As a police officer, you'd agree with me the concept
19 that if you witness somebody commit a crime or engage
20 in criminal activity, that you would have an
21 obligation to report it. Is that fair?

22 A. Yes.

23 MR. DELIE: Objection relevance. You
24 may answer.

25 A. Yes.

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1 BY MR. MULLINS:

2 Q. Are you familiar with the organization identified as
3 Moms for Liberty?

4 A. Yes.

5 Q. Are you a participant in Moms for Liberty?

6 A. Yes.

7 Q. As I understand it representing a number of cities
8 and schools, Moms for Liberty you were something of
9 an advocacy group that would appear at school board
10 meetings and advocate for non-masking and return to
11 in-person education; is that right?

12 A. Moms for Liberty is a group of mothers that have
13 children in specific school districts. They will go
14 and speak to a district that they have a vested
15 interest in, whether it's L'Anse Creuse or the
16 Chippewa Valley School District and advocate for
17 their children.

18 Q. And it's my understanding having attended many school
19 board meetings, that a central point of their
20 advocacy during this period of time that we're
21 talking about was that there shouldn't be masking and
22 that schools should be open or, if you will, in
23 person?

24 A. Yes.

25 Q. And the athletic activities should again be

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1 undertaken?

2 A. I don't know that we were part of the athletic
3 movement, but for sure it was that our children were
4 suffering and needed in-person learning.

5 Q. Some of the school board meetings that you attended,
6 the verbal exchanges become somewhat heated if you
7 will?

8 A. Yes.

9 Q. Was profanity at all exchanged at these school board
10 meetings?

11 A. Not that I recall, no.

12 Q. Okay. Had you ever directed descriptive comments to
13 school board members that they might take as
14 insulting or demeaning?

15 MR. DELIE: Objection vague, calls for
16 speculation. You may answer.

17 A. No.

18 BY MR. MULLINS:

19 Q. Associating, if you will, for example, Liz Pyden,
20 Frank Bednard or anybody on the Chippewa Valley
21 School District accusing them of being Nazi or
22 Gestapo like people in effectuating their policy, you
23 wouldn't consider that to be demeaning or threatening
24 or offensive?

25 MR. DELIE: Objection compound. You

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1 can answer.

2 A. Which part of that question would you like me to
3 answer first?

4 BY MR. MULLINS:

5 Q. If any one of those words or descriptions directed at
6 them would fairly be considered by them to be
7 offensive or demeaning or threatening?

8 MR. DELIE: Same objection. Also
9 calls for speculation. Sorry. You can answer.

10 A. I tried to tell a story about my family which I was
11 cut off. Had Mr. Bednard let me finish, maybe he
12 would have gotten the whole gist of it. If you are
13 referring to calling them Nazi in public, I do not
14 recall ever calling them Nazis. If you are referring
15 to Gestapo, which was a political police force that
16 was charged with securing the regime and protecting
17 the regime from racial and political enemies --

18 BY MR. MULLINS:

19 Q. The Nazi regime?

20 A. I said the Gestapo and I said the regime.

21 Q. You don't associate them with the Nazi regime?

22 A. I'm going by definitions, sir.

23 Q. So am I. If you don't think the Gestapo has anything
24 to do with Nazis, just say I don't associate the two.

25 A. I don't associate the two.

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1 Q. Okay.

2 A. I associate it as a political police party. It was
3 around even before Nazi Germany.

4 Q. Just to help me out with my history, where was it
5 before Nazi, Germany?

6 A. I want to say it was before Hitler became a
7 Chancellor to Germany. I can't give you an absolute
8 year.

9 Q. Go ahead. You were indicating what you were trying
10 to explain to Mr. Bednard.

11 A. Had Mr. Bednard not interrupted me, I probably would
12 have been able to finish.

13 Q. Okay. What additionally would you have liked to have
14 informed Mr. Bednard of other than what was recorded?

15 A. I couldn't tell you that now. It was what, two,
16 three years later? I don't even remember what the
17 rest of it was.

18 Q. You at least do recall accusing the school district
19 of engaging in Gestapo tactics?

20 A. Yes.

21 Q. And that they had turned the school board into a
22 dictatorship?

23 A. Yes.

24 Q. And I'm sure you understand that the school board
25 consists of seven individual members of the

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1 community?

2 A. Yes.

3 Q. They're members that must live within the school
4 district; is that right?

5 A. As a school board member, yes, you do have to live in
6 the district.

7 Q. And that they are elected by the residents of the
8 district?

9 A. Yes.

10 Q. But nonetheless you described them as a dictatorship?

11 A. Yes.

12 Q. Although you understand that they're freely elected?

13 A. Yes.

14 Q. Out of curiosity you indicate as a taxpayer, "I pay
15 your salaries." You remember including that in your
16 email to the board; is that right?

17 A. Yes.

18 Q. Would I be incorrect in saying you weren't a taxpayer
19 in Chippewa Valley?

20 A. Yes.

21 Q. Yes, I would be incorrect?

22 A. Yes.

23 Q. I'm confused there.

24 A. My tax dollars, regardless of what district my child
25 is in, they receive from the State of Michigan,

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1 regardless if they are a student that resides in that
2 district or not. Count Day. Perfect example. The
3 more children you have in the seats, the more tax
4 dollars you get. So, yes, my tax dollars do go to
5 the district.

6 Q. So talking a bit about you communicated with the
7 school board and to the extent that I have looked at
8 it, the school board never took any action as a board
9 relating to you; is that right?

10 A. Can you please expand on what your intention of that
11 question is?

12 Q. Well, as I understand it, for a school board to act,
13 they have to make a resolution, pass a resolution,
14 vote on it and a majority of the school board on any
15 official action that they were going to take would
16 have to act in that, if you will, democratic
17 administrative fashion. And I don't understand the
18 board to ever have officially addressed to you as a
19 board, as a group with any type of majority action or
20 resolution. Would that be fair?

21 A. Frank Bednard sent an email to the Department of
22 Justice about me. I don't think that's a fair
23 representation --

24 Q. Okay.

25 A. -- as the board president.

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1 Q. Let's set that off and we'll get back to that. I'll
2 give you all of the chance you want to talk about
3 that.

4 Am I correct in saying that there was
5 never a resolution made and voted upon by the board
6 and passed by a majority of the board that would
7 address you and/or your situation, your individual
8 situation in any fashion?

9 A. Not that I'm aware of.

10 Q. Now, Frank Bednard, he's an individual person?

11 A. Are you asking a question?

12 Q. Yes.

13 A. He is. He's also --

14 Q. Okay.

15 A. I'm not finished.

16 Q. Go ahead.

17 A. He is also the board president. And if I remember
18 right in the by-laws, as the board president he
19 speaks for the board.

20 Q. Well, okay. We'll let the by-laws speak for
21 themselves. He has no more than one vote of the
22 seven votes, if you know? Each board member votes
23 individually?

24 A. Yes.

25 Q. Four votes or more --

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1 A. Yes.

2 Q. -- constitutes the majority, and that's board action?

3 A. Yes.

4 Q. Frank Bednard, as best as I have been able to learn,
5 and as I read your Complaint, Frank Bednard
6 individually sent an email to the Department of
7 Justice in response to a publication by Merrick
8 Garland, the Attorney General; is that right?

9 A. Yes.

10 Q. He did that as an individual. He never presented it
11 to the board for any board action as best as you
12 know?

13 A. I don't know what he did --

14 Q. Okay.

15 A. -- without seeing the email.

16 Q. You're saying without seeing the email?

17 A. Yes.

18 Q. Okay. You understand he sent an email --

19 A. I do.

20 Q. -- do you understand him to have done other than
21 sending the email as you indicated in your Complaint?

22 A. He sent it to the entire board including the
23 superintendent.

24 Q. We covered that and I agree with you. He directed it
25 to the Department of Justice and copied it to all

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1 members of the board. Are you aware of him doing
2 anything else as it would relate to that? Did he
3 ever bring it up at a board meeting or otherwise ask
4 the board, I'd like to pass a resolution or have the
5 board take any action?

6 A. Not that I'm aware of.

7 Q. Other than the other six board members receiving that
8 email that was copied to them, are you aware of them
9 having taken any other action other than receiving
10 the email either individually or as a group?

11 A. They didn't take any action to tell him he was wrong.

12 Q. And I take that statement to mean you're not aware of
13 them taking any action at all?

14 A. No.

15 Q. Either for or against. They just received it?

16 A. Correct.

17 Q. Does Frank Bednard have any First Amendment Rights?

18 A. Of course he does.

19 MR. DELIE: Objection, calls for a
20 legal conclusion.

21 MR. MULLINS: Noted.

22 MR. DELIE: Continue.

23 A. He does.

24 BY MR. MULLINS:

25 Q. You agree that he does?

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1 A. We all do.

2 Q. We all do. That would include all seven individual
3 members of the board?

4 A. Yes.

5 Q. And Elizabeth Pyden?

6 A. Yes.

7 Q. You're familiar with, I presume you've read the
8 Attorney General's October 4th, 2021 email where he
9 asked that the school board advise the Department of
10 Justice as to situations where they felt that they
11 were being threatened at meetings during this period
12 of time?

13 A. Are you referring to the Merrick Garland memo or the
14 Frank --

15 Q. I am.

16 A. And the question for the Merrick Garland memo that
17 you have?

18 Q. Did you understand that he had communicated to
19 various governmental entities in particular school
20 boards and school board members and school
21 administrators, that he literally asks them to report
22 to the Department of Justice situations where they
23 felt threatened by actions or discussions or
24 demonstrations that took place at school board
25 meetings?

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1 A. Yes.

2 Q. Do you understand that Frank Bednard wrote his
3 individual email to the Department of Justice in
4 response to that October 4th, 2021 communication by
5 the Attorney General Merrick Garland?

6 MR. DELIE: Objection calls for
7 speculation. You may answer.

8 A. Yes.

9 BY MR. MULLINS:

10 Q. In general as a police officer, would you agree that
11 any school board member, any school administrator or
12 any school staff faculty member, teacher, that
13 perceived that they or any student or person at the
14 school district was being threatened or subject to
15 being threatened or subject to the threat of harm,
16 that they should, and, in fact, would be obligated to
17 report that sense of threat to law enforcement?

18 A. If they are being threatened, they absolutely should.

19 Q. Okay. Would you agree that as to any individual
20 whether they feel they're being threatened is
21 somewhat of a subjective response?

22 A. What do you mean subjective?

23 Q. That for, instance, you as a police officer might not
24 be as afraid walking down the street and being
25 addressed in a hostile way by some person, but

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1 somebody else might be more threatened by the manner
2 in which people act, talk, appear to be agitated,
3 whatever?

4 A. I think --

5 Q. That's what I mean by subjective. Different people
6 respond differently.

7 A. I think you need to understand what an actual threat
8 is. A threat is a physical violence, harm. Not
9 perception of words.

10 Q. Okay. But --

11 A. We can extract anything we want and make anything we
12 want out of any sentence that someone makes.

13 Q. Right.

14 A. We can take it to a level that is not appropriate.

15 Q. So I'm sure though you understand as a police officer
16 that many times someone will call the police
17 department, call 911, call you as a department, call
18 your, whatever group that you're in, and report a
19 concern or a threat and then you respond to it and
20 determine whether indeed it is a threat that requires
21 action or it doesn't?

22 A. A threat is clearly defined in Michigan Compiled Law.

23 Q. And you wouldn't sanction people for expressing their
24 fears or asking that the police look into or protect
25 or investigate their fear of a threat?

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1 A. Many times when it comes to taking threat reports,
2 people will provide evidence on how they were
3 threatened.

4 Q. Okay. And there's nothing wrong with that?

5 A. No.

6 Q. We've covered some of this stuff. I just want to
7 refer to some of the pleadings. You recall that we
8 sent to your attorney, and I'm sure he went over with
9 you and you prepared responses to request to admit
10 certain facts. Do you recall that?

11 A. Yes.

12 Q. I want to confirm some of the responses. You had
13 indicated that, I'll quote here. "You admit that you
14 did not suffer any monetary penalty as a result of
15 the investigation triggered as a result of Defendant
16 Pyden's email of December 11th, 2020"; is that right?

17 A. Yes.

18 Q. And as I understand this lawsuit, you've indicated
19 otherwise in the Complaint itself and in some of the
20 responses, you haven't suffered any monetary or
21 economic damage or loss as a result of your exchange
22 or dispute with these two members of the school board
23 and yourself?

24 A. Correct.

25 Q. You indicated and you may not be able to answer this,

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1 but you indicate that you're not seeking any economic
2 damages beyond nominal damages. And I think in your
3 Complaint you indicate nominal damages to be \$3. I'm
4 just asking if you have an understanding claim or
5 different opinion as to what you understand your
6 claim of nominal damages to be?

7 A. I don't even understand your question.

8 Q. Okay. I'm going back to, you recall that we had
9 asked you for your tax returns?

10 A. You did?

11 Q. Yes.

12 A. Okay.

13 Q. And I'm assuming you're working with your attorney
14 and if you need to go off and consult with him and we
15 can take a break and that would be fine. But A, we
16 asked for your tax returns and B, we asked for your
17 medical records.

18 A. Yeah, I believe I remember something in your
19 response, yes.

20 Q. Your response to that would be that my tax returns
21 aren't relevant and I'm not going to produce them.
22 And my medical records are not relevant and I'm not
23 going to produce them because I'm not seeking any
24 economic damage. I didn't lose any money and I'm not
25 seeking any recompense for economic damage and I

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1 didn't suffer any medical or psychological damage and
2 I'm not seeking any money or recommendation for any
3 medical or psychiatric damage. Is that fair?

4 A. That's fair, yes.

5 Q. Then you do go onto indicate, you're not seeking
6 anything beyond nominal damages which your Complaint
7 said was \$3. And I just want to make sure, do you
8 mean or understand that to be anything different?

9 A. It isn't anything different.

10 Q. Have you appeared at all or spoken at any Chippewa
11 Valley School Board meetings other than the ones
12 outlined in your Complaint since the filing of your
13 Complaint?

14 A. No. I no longer have a vested interest in the
15 district.

16 Q. You, in one of your emails, you had various email
17 exchanges with Ms. Pyden and Mr. Bednard; is that
18 right?

19 A. It was all of the school board members including Mr.
20 Roberts, the Superintendent.

21 Q. But some of your exchanges were actually directed, I
22 understand about copying emails, but were directed
23 and were exchanges between those two in particular?

24 A. I don't believe I had an email exchange with Mr.
25 Bednard. I did have an email exchange with Liz

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1 Pyden.

2 Q. There is, let me direct you to one particular comment
3 you made. You criticized Mr. Bednard in an email
4 exchange, I think you indicated about not letting you
5 talk as much as you wanted to talk and you indicated
6 the first two are for free. Does that ring a bell
7 with you?

8 A. Are you talking about the Sixth Circuit Court
9 decision regarding Open Meetings Act in school board
10 meetings and parents being interrupted when they are
11 giving public comment?

12 Q. No.

13 A. Then what is it that you're speaking of?

14 Q. We can get the email out, but where you talked with
15 him and you specifically directed to Frank Bednard,
16 you said, amongst other things you said, the first
17 two are for free, referencing the first two times you
18 stopped me from speaking, they are for free...

19 A. That went to --

20 Q. Do you recall that?

21 A. That went to every board member including Mr. Roberts
22 the Superintendent.

23 Q. But did you say, Frank, when you, the first two are
24 for free?

25 A. Yes, I did.

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1 Q. And he might have perceived that as a threat, meaning
2 there's going to be some cost to me. What did you
3 mean by indicating to him the first two are for free?

4 A. Okay. First and foremost, Frank is a retired
5 sergeant from the Macomb County Sheriff's office from
6 what I'm told.

7 Q. We can agree on that.

8 A. Frank knows very well what Michigan Compiled Law is.
9 Very well what a threat is. The threat was, if any,
10 if you want to call it a threat, a veiled threat,
11 don't interrupt me again. And here's the legal
12 backing I have as to why you cannot interrupt me
13 anymore.

14 Q. Okay.

15 A. If you get physical violence out of that, I'm sorry,
16 especially since he was a sergeant and he knows
17 better.

18 Q. I don't get anything from it because it just said the
19 first two are for free... and you just said a bunch
20 of things that weren't in that email and I just, how
21 he perceived it, whether he perceived that as a
22 threat and not understanding what cost he would incur
23 if you didn't allow him what he wanted I -- so I just
24 was wondering what you meant by the first two are for
25 free?

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1 A. That if he were to continue to interrupt me, that I
2 would seek legal action.

3 Q. And apparently you do perceive that he saw that as
4 some threat to him?

5 A. Why wouldn't he?

6 Q. Why wouldn't he? I agree with you. Yes.

7 A. I mean we're two opposite ends of the spectrum.

8 Q. When you spoke to the board, you spoke to the board
9 during what is generally referred to as the public
10 comment portion of the board meeting on the agenda;
11 is that right?

12 A. Yes.

13 Q. And as I understand it, the board had a policy or
14 practice of everybody can indicate that they wish to
15 speak, indicate who they are and their commentary is
16 limited in time; is that right?

17 A. Yes.

18 Q. And my understanding is that is five minutes; is that
19 right?

20 A. I believe so. I don't recall how long the time frame
21 was.

22 Q. And you were allowed to go past that time period on a
23 number of times being cautioned that your time is up,
24 please wrap it up, but that was the manner in which
25 the board attempted to proceed; is that right?

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1 A. I don't recall them ever telling me that my time was
2 up.

3 Q. Do you object to the manner in which you were allowed
4 to address the board?

5 A. How do you mean?

6 Q. In any way.

7 A. I don't understand your question. That's what I'm
8 trying to say.

9 Q. Well, you indicate that you want to speak. They call
10 people up in order. You approached the podium and
11 addressed the board and did so a number of times and
12 it's in your Complaint of different occasions that
13 you did so; is that correct?

14 A. I was able to address the board, yes.

15 Q. Do you object in any fashion as to the manner in
16 which you were subject to the board? Do you feel in
17 any way you were improperly or in violation of your
18 First Amendment Rights, prevented from expressing
19 your views?

20 A. Yes, when I was interrupted.

21 Q. Go ahead. If you can tell me when, where and how and
22 by whom.

23 A. Two consecutive meetings I believe that I went to,
24 and I don't remember the exact dates, but the first
25 meeting when I was speaking about my family history I

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1 was interrupted at least two times that I can recall.

2 And the follow-up meeting after --

3 Q. Let me stop you there. That meeting you were
4 interrupted in what fashion?

5 A. I was mid sentence and I was told to stop from the
6 best of my recollection.

7 Q. Okay. Because --

8 A. I don't know.

9 Q. -- your time was up?

10 A. No, it was not. I was well within my time.

11 Q. So you don't know why you were told to stop?

12 A. No.

13 Q. And that would be the first time you spoke?

14 A. At the public meeting? Yes.

15 Q. At the meeting, yes.

16 A. That was the first in public meeting that I had been
17 to.

18 Q. What other time and in what other fashion were you
19 interfered with in expressing your thoughts or
20 comments?

21 A. Are we speaking of this first meeting, or are we
22 talking about the second meeting that I was
23 interrupted?

24 A. Well, I want to make sure that I cover completely the
25 first meeting you were speaking and you were told to

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1 stop. Why or how were you told to stop and what else
2 was it that you were prevented from saying?

3 A. I don't remember his exact verbiage.

4 Q. His being?

5 A. Frank.

6 Q. Go ahead.

7 A. I can recall at least two. It could have been three
8 times. I don't know without looking at the video
9 that he was interjecting.

10 Q. Okay. Are we at different meetings now?

11 A. No, this was the first that we're speaking of, the
12 first in-person meeting that I attended.

13 Q. Go ahead.

14 A. Okay. That's the first in-person meeting. The
15 second in-person meeting he interrupted me again and
16 I think I was actually giving praise to parents that
17 came to school board meetings to talk because it's
18 not easy.

19 Q. Okay.

20 A. I know I was at least interrupted once or twice
21 during that one.

22 Q. Interrupted in what fashion?

23 A. That he interrupted me, telling me, to the best of my
24 knowledge that I was either cautioned or I needed to
25 stop.

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1 Q. Okay. You don't understand that to be in relation to
2 any time limitations at all?

3 A. No, it was not. I was well within my time.

4 Q. And not in relation at all to the manner in which the
5 verbiage you were using?

6 A. No.

7 Q. Any other times?

8 A. Without looking at any other specific videos, not
9 that I can recall.

10 Q. Okay. Other than what you just described and the
11 emails sent to the Department of Justice and the
12 emails sent to your Harper Woods Police Chief, any
13 other complaints that you have as would relate to
14 your First Amendment Rights and these two board
15 members at the school district?

16 A. What do you mean?

17 Q. Is there anything that we haven't covered that you're
18 complaining about?

19 A. You mean other than the way my children were treated?

20 Q. We're not talking about the way your children were
21 treated. We're talking about your expression of your
22 thoughts, your statements, your First Amendment
23 Rights which I understand this case to be limited to?

24 A. Anything that you guys missed, I'm sure Mr. Delie
25 will pick up.

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1 Q. But you can't think of anything else as we sit here
2 today?

3 A. As of right now, no.

4 Q. Okay. We talked about this a bit but I just want to
5 make sure we're clear on the matter. In Paragraph 60
6 of your Complaint you say that Frank Bednard's email
7 was an official act of the board. And we know that
8 he as an individual sent an email to the Department
9 of Justice. And as you indicated, it was also
10 received by other members of the board and by the
11 superintendent.

12 I just want to understand as best as
13 you understand it how you believe that to constitute
14 that one individual's communication to whomever, how
15 you attribute that or describe it as an official act
16 of the board?

17 MR. DELIE: Objection calls for a
18 legal conclusion. Also argumentative. You may
19 answer.

20 A. So you want to know why I think the board is in with
21 Mr. Bednard? Is that how I'm understanding your
22 question?

23 BY MR. MULLINS:

24 Q. No. I'm specifically looking at what you said in
25 your Complaint. And you said that his, one person,

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1 wrote a letter which was sent out to other board
2 members, to the superintendent, and it was directed
3 to the Department of Justice. I think we can all
4 agree on that.

5 I'm asking you how you consider that,
6 you seem to have some understanding of municipal or
7 school board law. You've lectured Mr. Bednard on
8 that in your email and myself here as to what the law
9 calls for. I'm trying to understand from you, if you
10 know, why you would consider that to be an official
11 act of the board as opposed to an individual
12 expression on the part of Mr. Bednard?

13 A. Mr. Bednard was the President of the Chippewa Valley
14 Board and School District. As president, he is the
15 spokesperson for the board.

16 Q. So, whatever he says is an action of the board. What
17 he says goes?

18 A. Yes.

19 Q. And if the other five members of the board disagreed
20 with what he said, or for that matter any four
21 members of the board disagreed with what he said, it
22 would still be an official action of the board even
23 though the majority of the board disagreed with him?

24 A. Yeah. Show me that they disagreed.

25 Q. I'm sorry?

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1 A. Show me that they disagreed.

2 Q. Or show me that they agreed.

3 A. Yeah, he acted upon the board. He is the president
4 and he is the spokesperson for the seven people on
5 the board.

6 Q. You're not aware of any action taken by any of the
7 other six members of the board other than being
8 passive recipients of his communication?

9 A. Repeat your question.

10 Q. He sent out an email that was copied to them as well
11 as Mr. Roberts. Are you aware of any of those other
12 six members of the board or Mr. Roberts or anybody
13 from the administration taking any action to affirm
14 or further the singular act of that individual, Mr.
15 Bednard, sending out that email?

16 A. I wouldn't have that information.

17 Q. And don't?

18 A. Why would I?

19 Q. I'm just asking you. Your attorney might have told
20 you. Somebody else, you said somebody informed you
21 of this or you might have heard or been at a school
22 board meeting two months after this where they
23 resolved to affirm his, you know -- you're not aware
24 of anything like that?

25 A. Actually a couple of months after this had come out,

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1 there was one school board member that publicly
2 apologized for the actions of the board with regards
3 to the actions taken.

4 Q. So the only thing you're aware of is that Frank
5 Bednard indicated his communication to the Department
6 of Justice and the other school board members said I
7 don't agree with what he did or what he said.

8 A. One.

9 Q. So as to the -- so that takes, we've got two
10 opposing, if you will, opinions on the board and what
11 the other five opinions might be, you don't know?

12 A. No. They sure didn't say they didn't not agree with
13 him publicly.

14 Q. They didn't do anything?

15 A. No.

16 MR. MULLINS: Okay. Why don't we take
17 a break for a moment?

18 (Whereupon a recess was held off the
19 record from 1:43 to 2:06 p.m.)

20 MR. MULLINS: I have no further
21 questions.

22 E X A M I N A T I O N

23 BY MR. DELIE:

24 Q. I just have a few quick follow-ups, Sandra, if I can.

25 A. Okay.

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1 Q. Earlier you were asked about emails that you sent to
2 the board. Do you recall that testimony?

3 A. Yes.

4 Q. And I believe you said, and please correct me if I'm
5 wrong, something along the lines of you always email
6 the board in its entirety, all of its members?

7 A. Yes.

8 Q. Occasionally there would be follow up from those
9 emails; correct?

10 A. Yes.

11 Q. And sometimes that was one-on-one with a board
12 member?

13 A. To the best of my knowledge, yes.

14 Q. Let's do -- do you recall the opposing counsel asked
15 you some questions about an email to the board where
16 you said the first two were free?

17 A. Yes.

18 Q. And that email in particular, can you explain what
19 your intent behind that email was?

20 A. My intent was not to continue to be interrupted when
21 I spoke.

22 Q. And did you include anything in that email other than
23 your own language? Did you attach anything? Was
24 there any hyperlinks? Anything like that?

25 A. There was a link to a Federal Sixth Circuit Court's

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1 decision regarding parents being interrupted during
2 school board meeting open comment.

3 Q. And what was your intent in including that?

4 A. My intent was, please stop interrupting me or face
5 legal action.

6 Q. Thank you. I'm going to go in a different direction
7 and ask you a few specific questions regarding you
8 and Ms. Pyden. Have you ever directed any
9 individuals to travel to Ms. Pyden's home?

10 A. No.

11 Q. Have you ever suggested to anyone the idea that they
12 should travel to Ms. Pyden's home?

13 A. No.

14 Q. Have you ever threatened Ms. Pyden with violence?

15 A. No.

16 Q. Have you ever threatened Defendant Bednard with
17 violence?

18 A. No.

19 Q. Have you ever threatened any of the other Defendants,
20 so any other members of the school board at the time?

21 A. No.

22 Q. Other than email or social media, have you ever
23 contacted members of the board outside of public
24 meeting?

25 A. Absolutely not.

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1 Q. Have you ever been disciplined at work due to your
2 activity on social media?

3 A. Not to the best of my knowledge, no. Not that I
4 recall.

5 MR. DELIE: That's all I have.

6 R E - E X A M I N A T I O N

7 BY MR. MULLINS:

8 Q. Do you understand that Ms. Pyden was concerned about
9 the fact that people were coming to her home and
10 parking outside of it and she felt threatened by that
11 fact during this period of time that this controversy
12 was going on?

13 MR. DELIE: Objection calls for
14 speculation. You may answer.

15 A. I can tell you I don't know where she lives. I don't
16 know where Frank lives. I don't care to know. I
17 wouldn't direct anybody to do that because I would
18 believe that would constitute and rise to the level
19 of harassment. And I have a job that I love and that
20 I want to keep.

21 I have three children that I have to
22 raise and put through college. Unfortunately,
23 they're not worth my time like that. And
24 furthermore, I didn't have time between working 10
25 and 28-hour days. And the days that I did get to

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1 come home to my children, I had to help educate them
2 because the learning they were receiving remotely
3 wasn't enough.

4 And unfortunately math is not my
5 strong point and my son who graduated from Dakota,
6 that was his Achilles heel. And I spent many hours
7 going through YouTube videos to help him with his
8 math.

9 With my son, Connor, he had a hard
10 time understanding anything, so I was there with him
11 for hours going through his assignments, helping him
12 with his assignments.

13 And my kindergartner at the time, even
14 though he was held back a second time in
15 kindergarten, I was helping him.

16 Now you factor in that and keeping
17 track of a household, doing laundry, cooking dinners,
18 making sure my home is intact and running
19 efficiently, not to mention call ins on my days off,
20 where do I have time? Where do I have the time to
21 direct anybody to do that?

22 Q. And I appreciate everything that you just said, but
23 that's not my question. My question is, are you
24 aware that Ms. Pyden was concerned about the fact
25 that people were parking outside of her home during

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1 this period of time of controversy and that appeared
2 to be related to that?

3 A. No, I didn't. And if that were the case and they
4 meant her harm, she should have either called the
5 police or videotaped what happened.

6 MR. MULLINS: Very good. I have
7 nothing further.

8 MR. DELIE: I believe we're all
9 finished.

10 MR. MULLINS: Good. Thanks for
11 coming.

12 THE WITNESS: You're welcome.

13 (Deposition concluded at 2:12 p.m.)

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CERTIFICATE OF NOTARY

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

CERTIFICATE OF REPORTER

I, JULIE A. CATKA, Certified Shorthand Reporter, a Notary Public, do hereby certify that I recorded in shorthand the deposition of SANDRA HERNDEN, in the matter of Sandra Hernden versus Chippewa Valley Schools, Frank Bednard and Elizabeth Pyden, and that prior to the taking of said deposition, the witness was first duly sworn, and that the foregoing 60 pages comprise a complete, true, and accurate record to the best of my ability of the testimony of said witness.

Julie A. Catka, CSR-6530, CER-6530

Notary Public, Wayne County, Michigan
Acting in the County of Oakland
My commission expires: October 3, 2025.
Dated: This 2nd day of September 2023

EXHIBIT B

AFFIDAVIT OF ELIZABETH PYDEN

1. My name is Elizabeth Pyden.
2. I was a member of the Chippewa Valley School (the “District”) Board of Education (the “Board”) from November 2012 to December 31, 2022. I am not currently a member of the Board.
3. I served the Board as Secretary in 2015, 2021, 2022; as Vice-President in 2016; and President in 2017, 2018 and 2019.
4. During my years serving on the Board, an individual named Sandra Hernden (“Plaintiff”) participated in the public comment section of Board meetings from time to time.
5. During my tenure on the Board, Plaintiff engaged in the following threatening or intimidating acts against me:
 - Attending Board meetings wherein she publicly defamed me, ranging from conflicts of interest to improper motivations.
 - Engaging in on-line forums encouraging others in the community to disparage me.
 - Engaging in on-line forums providing my home address and telephone number, at times indicating that my home was procured by illegal means or misappropriation of district funds. This resulted in occupied cars parked in front of my home on at least two occasions of which I am aware. It also resulted in unmarked mail, including Nazi cartoons, being sent to my home. I also received telephone calls and messages from spammed numbers indicating that I should kill myself.
 - Having her husband impersonate me on-line under the name “KB Hern.”
 - Hosting Zoom meetings where I was a topic on the agenda. During these meetings my character was maligned and methods addressing how to get me to leave the


Board were discussed.

- Repeatedly sending harassing and threatening emails.
 - Sending messages to the Board and community wherein she demanded “action” be taken against me.
 - Posting online hateful messages about my age, appearance, and family.
6. On December 10, 2020, I exchanged several emails with Plaintiff regarding the global pandemic, face-to-face learning, and Board action related to such topics.
 7. At 12:42 PM on December 10, 2020, Plaintiff sent a news article to District Board members regarding COVID-19 and schools.
 8. Over the course of subsequent emails, Plaintiff proceeded to issue a series of personal attacks against me.
 9. On December 11, 2020, I forwarded the email correspondence chain from my District Board email address of BPYden@cvs.k12.mi.us to my personal email address of elizabethpyden@sbcglobal.net.
 10. Thereafter, on December 11, 2020, I forwarded the email chain from my personal email to Vince Smith, then Director of the Harper Woods Department of Public Safety.
 11. I advised Chief Smith that I was concerned about Plaintiff’s behavior at Board meetings in her capacity as a public safety officer, as she routinely announced in her public comments that she was a public safety officer.
 12. I am of the personal belief that individuals can and should report or refer possible threats, intimidating acts, or harassment to law enforcement for investigation.
 13. I never discussed sending this email to the Director of the Harper Woods Department of Public Safety with any member of the District Board or Administration prior to sending it.

14. I never advised any member of the District Board or Administration that I planned to send the email to the Director of the Harper Woods Department of Public Safety in advance of sending the email.
15. My communication to the Director of the Harper Woods Department of Public Safety was my communication alone and not a communication from the District Board or Administration.
16. The Board never ratified nor adopted my communication with the Director of the Harper Woods Department of Public Safety.
17. The Board never discussed my communication with the Director of the Harper Woods Department of Public Safety whatsoever.
18. I did not discuss with Frank Bednard, former District Board Member and President, his individual decision to send a concern to the Department of Justice. The Board certainly did not deliberate or ask Frank Bednard to send this communication.
19. Frank Bednard's communication was his communication alone and not a communication from the District Board.
20. I have never ratified nor adopted Frank Bednard's communication.
21. The Board did not discuss Frank Bednard's communication with the Department of Justice whatsoever. Frankly, I cannot recall if I ever even read Frank Bednard's email, as we were inundated with communication at this time, which was during the global pandemic.
22. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
23. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.


24. The Board never ratified nor adopted Frank Bednard's communication with the DOJ.

25. The Board never discussed Frank Bednard's communication with the DOJ whatsoever.


Elizabeth Pyden

Subscribed and sworn to before me this

19th day of October, 2023


Notary Public, Macomb County, MI

Acting in Macomb County

My Commission Expires: September 04, 2029

EXHIBIT C

AFFIDAVIT OF FRANK BEDNARD


1. My name is Frank Bednard.
2. I was a member of the Chippewa Valley School (the “District”) Board of Education (the “Board”) from 2000 to 2022. I am not currently a member of the Board.
3. From 2014 to 2016 and 2018 to 2022, I served as Board President.
4. During my years serving on the Board, an individual named Sandra Hernden (“Plaintiff”) participated in the public comment section of Board meetings from time to time.
5. As Board President, I served as the presiding officer during public comment to administer the rules of the Board regarding the conduct of the meetings.
6. As Board President, it was my duty to ensure those participating in public comment followed the applicable guidelines to permit fair and orderly public expression.
7. Plaintiff disregarded public comment guidelines, but I never stopped her from speaking during public comment.
8. I was unaware, at the time it occurred, that former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Plaintiff. I was not involved in the decision to do so.
9. I am of the personal belief that all individuals can and should report or refer possible threats, intimidating acts, or harassment to law enforcement for investigation.
10. At a Board meeting on September 13, 2021, Plaintiff participated in public comment. I immediately observed that Plaintiff’s demeanor was much more serious than when normally addressing the Board. She seemed very angry and very agitated. Plaintiff’s public comment to the Board began with a history of the publication of Adolf Hitler’s *Mein Kampf* and a description of how Nazi Germany labeled Jewish individuals with “yellow badges.”

As these comments went on for some time and appeared to be irrelevant to District matters, I attempted to direct the Plaintiff to explain how this commentary related to the District. The Plaintiff continued, telling a story about a family member. When I again attempted to direct the Plaintiff to address District matters, she yelled several times in response that she was getting to her point. The Plaintiff proceeded to tell the Board that, by having students wear masks, the Board was just like the Nazi's identifying Jewish individuals with yellow badges. As of September 13, 2021, the District did not have a mask mandate in place. As a retired Macomb Sheriff Command Officer, I have more than 30 years of experience and training in reading an individual's behavior. During this public comment period, the Plaintiff's aggressive behavior shocked and scared me.

11. On October 4, 2021, United States Attorney General Merrick Garland issued a memorandum titled "Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff."
12. On October 4, 2021, I viewed an ABC News report on the memorandum which reported that anyone could refer abusive, intimidating, or threatening behaviors at Board meetings to the Department of Justice ("DOJ").
13. At 9:44 PM on October 4, 2021, Plaintiff sent an electronic correspondence to the District Superintendent and Board Members with the subject line "Special attention to Frank" with a link to a news article about a recent Sixth Circuit decision concerning public commentary at school board meetings.
14. Plaintiff's October 4, 2021, email directed me to "use more due care and caution at the next [Board] meeting" and advised that the "1st 2 were free ..."

15. Coupled with Plaintiff's escalating aggressive behavior at Board meetings, I found this email to be threatening and intimidating and transmitted a copy of it with a complaint to the DOJ on October 5, 2021.
16. I never discussed sending this email to the DOJ with any member of the District Board or Administration prior to sending it.
17. On October 5, 2021, after I sent the email to the DOJ, I emailed the District Superintendent and Board, via the BoardMembers@cvs.k12.mi.us email address, informing them that I forwarded Plaintiff's email to the DOJ along with a complaint about her and Mothers of Liberty.
18. The extent of my discussion with the District Superintendent and Board regarding my email to the DOJ was the email notification I sent on October 5, 2021.
19. I never advised any member of the District Board or Administration that I planned to send the email to the DOJ in advance of sending the email.
20. I had no actual knowledge or indication that DOJ action to address my complaint would be appreciated by the District Board, Administration, or community.
21. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
22. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
23. My communication to the DOJ was my communication alone and not a communication from the District Board or Administration.
24. The Board never ratified nor adopted my communication with the DOJ.
25. The Board never discussed my communication with the DOJ whatsoever.

Kristin A. Macksoud
NOTARY PUBLIC - STATE OF MICHIGAN
County of Macomb
My Commission Expires 8/3/2024
Acting in the County of Macomb



Frank Bednard

Subscribed and sworn to before me this

19th day of October, 2023

Kristin A. Macksoud
Notary Public, Macomb County, MI

Acting in Macomb County

My Commission Expires: 8/2/2024

EXHIBIT D

**CHIPPEWA VALLEY SCHOOLS
BOARD OF EDUCATION – REGULAR MEETING
Chippewa Valley School Administration Building/Virtually Conducted
February 08, 2021**

President Bednard called the meeting to order at 6:31 p.m. and the Pledge of Allegiance was waived.

Present, Virtually: Members Andriaschko, Aquino, Bednard, DeMuyneck Zech,
Pyden, Sobah and Wojtowicz
Absent: None
Also, Present: Mr. Roberts, Mr. Sederlund, Dr. Blanchard, Dr. Brosky, Ms. Licari,
Mr. Sibley, Mr. Kozlowski, Ms. Blain, Ms. Monnier-White and Ms. Adlam

Effective October 16, 2020, Governor Gretchen Whitmer signed Senate Bill 1108 amending the Open Meetings Act (OMA) to allow public bodies to conduct electronic "virtual" meetings with remote participation for any reason through the end of 2020, and in 2021 under specific circumstances. This amendment applies retroactively to March 18, 2020.

Additions/Deletions - None

Recognition/Presentations

- Superintendent Ron Roberts congratulated Chippewa Valley Schools 2015 graduate, Sean Murphy-Bunting on earning a Super Bowl ring as a member of the Tampa Bay Buccaneers.
- Superintendent Roberts asked for a moment of silence in honor of Ms. Pat Pehrson (Guidance Clerk, CV 9th Grade Center) who passed away on February 1st. Ms. Pehrson was a valued CVS employee for the past 20 years. She took her job very seriously and worked very hard for the district. Ms. Pehrson will be missed.

MOTION #02/01/21 – Moved by Member Aquino and supported by Member DeMuyneck Zech to approve the General Consent Agenda to:

- Approve Minutes of the Regular Meeting held on January 25, 2021.
- Approve General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$1,726,700.59.
- Approve 2018 Building & Site Payments Report in the amount of \$16,848.12.
- Approve Building Activity Check Register in the amount of \$30,201.73.
- Approve Personnel Transactions

A roll call vote was taken. Member DeMuyneck Zech, yes; Member Andriaschko, yes; Member Aquino, yes; Member Bednard, yes; Member Sobah, yes; Member Wojtowicz, yes and Member Pyden, yes.

Motion carried.

From the Community:

- Ms. Sandra Hernden (district parent) addressed the Board of Education.
- Ms. Kimberly Dashiell (district parent) addressed the Board of Education.
- Ms. Anna Neuner (district parent) addressed the Board of Education.
- Ms. Shannon Gedert (district parent) addressed the Board of Education.

Old Business – None

MOTION #02/02/21 - Moved by Member DeMuyck Zech and supported by Member Wojtowicz that the Chippewa Valley Schools Board of Education award contracts to the following companies totaling \$827,159.90 for the purchase and installation of new firewall, web filtering and email security network equipment:

<u>Bid Category</u>	<u>Contractor</u>	<u>Total</u>
Firewall and Web Filter	Sentinel Technologies	\$589,476.36
Email Filter	MBM Technology Solutions	\$237,683.54

A roll call vote was taken. Member DeMuyck Zech, yes; Member Wojtowicz, yes; Member Andriaschko, yes; Member Aquino, yes; Member Bednard, yes; Member Sobah, yes and Member Pyden, yes. **Motion carried.**

MOTION #02/03/21 - Moved by Member Aquino and supported by Member Sobah that the Chippewa Valley Schools Board of Education reconfirm the *Extended COVID-19 Learning Plan for the 2020-2021 School Year*.

A roll call vote was taken. Member Aquino, yes; Member Sobah, yes; Member Andriaschko, yes; Member Bednard, yes; Member DeMuyck Zech, no; Member Wojtowicz, no and Member Pyden, yes. **Motion carried.**

Union Communications – None

Administration Reports

Superintendent Roberts reported on the following:

- Recognized Mr. John Stanson (Head Custodian, Cheyenne Elementary) for his outstanding service to Chippewa Valley Schools. Congratulations to him on his retirement.
- Superintendent Roberts gave an updated COVID-19 report to the Board of Education.

Curriculum Reports

- Dr. Donald Brosky (Asst. Superintendent, Educational Services) presented information related to assessment requirements, mandated by the State of Michigan, to the Board of Education.

Of and by Board Members

- Member DeMuyck Zech had questions with regards to the availability of drinking water for students in the schools.
- Member Bednard inquired about the water filling stations which are expected to be installed very soon.
- Member Aquino offered condolences regarding the passing of Ms. Pat Pehrson (Guidance Clerk, CV9th Grade). Ms. Aquino remembers Ms. Pehrson as a very active district parent and community member for the past 30 years.
- Member Bednard discussed Board of Education sub-committee assignments. He also would like administration to prepare policy/by-laws for the Technology Sub-Committee and the Operations Sub-Committee. Mr. Bednard also thanked Members DeMuyck Zech and Wojtowicz for their comments during the meeting. Mr. Bednard also wants to give credit to Superintendent Roberts and his administrative team for their efforts to make difficult decisions related to district operations this year.

MOTION #02/03/21 – Moved by Member DeMuyck Zech and supported by Member Andriaschko to adjourn the meeting.

A roll call vote was taken. Member DeMuyck Zech, yes; Member Andriaschko, yes; Member Aquino, yes; Member Bednard, yes; Member Sobah, yes; Member Wojtowicz, yes and Member Pyden, yes.

Motion carried.

Meeting adjourned 8:19 p.m.

Respectfully Submitted,

Elizabeth Pyden, Secretary
Board of Education

**CHIPPEWA VALLEY SCHOOLS
BOARD OF EDUCATION – REGULAR MEETING
Chippewa Valley High School Auditorium
September 13, 2021**

President Bednard called the meeting to order at 6:33 p.m. and the Pledge of Allegiance was given.

Present: Members Aquino, Bednard, DeMuynck Zech, Pyden and Wojtowicz
Absent: Members Andriaschko and Sobah (Excused)
Also, Present: Mr. Roberts, Mr. Sederlund, Dr. Brosky, Dr. Blanchard, Ms. Licari,
Mr. Sibley, Dr. Langlands, Ms. Blain, Ms. Monnier-White and
Ms. Adlam

Additions/Deletions – None

Recognition/Presentations

- Superintendent Ron Roberts presented a PowerPoint highlighting the opening of the 2021-2022 school year.

MOTION #09/01/21 – Moved by Member DeMuynck Zech and supported by Member Aquino to approve the General Consent Agenda to:

- Approve Minutes of the Regular Meeting held on August 23, 2021.
- Approve General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$1,838,967.66.
- Approve 2018 Building & Site Payments Report in the amount of \$203,807.98.
- Approve Building Activity Check Register in the amount of \$49,783.76.
- Approve Personnel Transactions.

A roll call vote was taken. Member DeMuynck Zech, yes; Member Aquino, yes; Member Bednard, yes; Member Pyden, yes and Member Wojtowicz, yes. **Motion carried.**

Old Business – None

New Business - None

From the Community

- Mr. Henry Cochran (community member) addressed the Board of Education.
- Ms. Sandra Hernden (district parent) addressed the Board of Education.
- Ms. Melody Perrin (community member) addressed the Board of Education.
- Ms. Lisa Stella (district parent) addressed the Board of Education.
- Ms. Nancy Duemling (community member) addressed the Board of Education.
- Ms. Kathleen Schneider (district parent) addressed the Board of Education.
- Mr. Dan St. Laurent (district parent) addressed the Board of Education.
- Ms. Jessica St. Laurent (district parent) addressed the Board of Education.

Union Communications - None

Administration Reports

- Superintendent Roberts reported numbers related to positive COVID cases and the resulting quarantines through the first week of school. Superintendent Roberts continues to meet with the Macomb County Health Department weekly to assess the effectiveness of safety protocols.

Curriculum Reports - None

Of and by Board Members -

- Member Wojtowicz reported to the whole Board the details of the presentation made in the Operations Sub-Committee. The Chippewa Valley Education Foundation will be selling naming rights to seats in district auditoriums.
- Member DeMuyck Zech suggested ways in which the district could communicate regarding current issues. She also requested a SACC update.
- Member Aquino also commented on communication regarding current district issues. She also expressed concern for district staffing issues.
- Member Bednard:
 - Thanked Mr. Wojtowicz for being the district legislative liaison for the Macomb County School Board Association.
 - Supports the idea of communicating regarding current district issues.
 - Thanked district staff for a successful first week.
 - Commented on the rights of Board Members to attend community meetings, etc.

MOTION #09/03/21– Moved by Member DeMuyck Zech and supported by Member Pyden that the meeting be adjourned into Executive Session (*8.a. – To consider the dismissal, suspension, or discipling of, or to hear complaint or charges brought against, or to consider a periodic personnel evaluation...*).

A roll call vote was taken. Member DeMuyck Zech, yes; Member Pyden, yes; Member Aquino, yes; Member Bednard, yes; and Member Wojtowicz, yes. **Motion carried.**

Meeting adjourned into Executive Session at 7:56 p.m.

Meeting reconvened into Open Session at 10:35 p.m.

MOTION #09/04/21 – Moved by Member DeMuyck Zech and supported by Member Wojtowicz to adjourn the meeting.

A roll call vote was taken. Member DeMuyck Zech, yes; Member Wojtowicz, yes; Member Aquino, yes; Member Bednard, yes and Member Pyden, yes. **Motion carried.**

Meeting adjourned at 10:36 p.m.

Respectfully Submitted,

Elizabeth Pyden, Secretary
Board of Education

**CHIPPEWA VALLEY SCHOOLS
BOARD OF EDUCATION – REGULAR MEETING
Chippewa Valley High School Auditorium
October 04, 2021**

President Bednard called the meeting to order at 6:31 p.m. and the Pledge of Allegiance was given.

Present: Members Aquino, Bednard, DeMuyneck Zech, Pyden, Sobah and Wojtowicz
Absent: None
Also, Present: Mr. Roberts, Mr. Sederlund, Dr. Brosky, Dr. Blanchard, Ms. Licari, Mr. Sibley, Ms. Blain, Ms. Monnier-White and Ms. Adlam

Additions/Deletions – None

Recognition/Presentations

- Superintendent Ron Roberts presented regarding COVID-19 and its current impact on our schools.

MOTION #10/01/21 – Moved by Member DeMuyneck Zech and supported by Member Sobah to approve the General Consent Agenda to:

- Approve Minutes of the Regular Meeting held on September 13, 2021.
- Approve September 27, 2021, General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$1,819,444.98.
- Approve September 27, 2021, Wire Transfers, ACH and Payments report in the amount of \$8,768,678.57.
- Approve September 27, 2021, 2018 Building & Site Payments Report in the amount of \$207,465.43.
- Approve September 27, 2021, Building Activity Check Register in the amount of \$68,309.20.
- Approve October 04, 2021, General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$256,799.86.
- Approve October 04, 2021, 2018 Building & Site Payments Report in the amount of \$563,843.29.
- Approve October 04, 2021, Building Activity Check Register in the amount of \$23,432.20.
- Approve Personnel Transactions.

A roll call vote was taken. Member DeMuyneck Zech, yes; Member Sobah, yes; Member Aquino,¹ yes; Member Bednard, yes; Member Pyden, yes and Member Wojtowicz, yes. **Motion carried.**

Old Business – None

MOTION #10/02/21 - Moved by Member Aquino and supported by Member DeMuynck Zech that the Chippewa Valley Schools Board of Education approve the 2018 Bond Issue Change Order Summary Report for the month of August 2021.

A roll call vote was taken. Member Aquino, yes; Member DeMuynck Zech, yes; Member Bednard, yes; Member Pyden, yes; Member Sobah, yes and Member Wojtowicz, yes.

Motion carried.

From the Community

- Mr. Dan Mordan (district parent) addressed the Board of Education.
- Mr. Bill Bokano (district parent) addressed the Board of Education.
- Ms. Jennifer Bryant (district parent) addressed the Board of Education.
- Ms. Michelle Bokano (district parent) addressed the Board of Education.
- Mr. Jennifer Maruri (district parent) addressed the Board of Education.
- Mr. Dan St. Laurent (district parent) addressed the Board of Education.
- Mr. Jessica St. Laurent (district parent) addressed the Board of Education.
- Ms. Rita Zielinski (district parent) addressed the Board of Education.
- Ms. Monica Radyko (district parent) addressed the Board of Education.
- Mr. Terry Prince (district parent) addressed the Board of Education.
- Mr. Julie Costanza (district parent) addressed the Board of Education.
- Mr. Sandra Hernden (district parent) addressed the Board of Education.

Union Communications - None

Administration Reports None

Curriculum Reports - None

Of and by Board Members -

- Mr. Frank Bednard (President, Board of Education) and Board of Education members discussed the plan to proceed with the interviewing and selection process for the board member vacancy.
- Member Aquino indicated the importance of all six board members being available to attend the next couple of special board meetings to work on the board member vacancy process.

MOTION #10/03/21– Moved by Member Aquino and supported by Member DeMuyneck Zech that the meeting be adjourned into Executive Session (*8.h. – Attorney/Client Privilege*).

A roll call vote was taken. Member Aquino, yes; Member DeMuyneck Zech, yes; Member Bednard, yes; Member Pyden, yes; Member Sobah, yes and Member Wojtowicz, yes.

Motion carried.

Meeting adjourned into Executive Session at 8:10 p.m.

Meeting reconvened into Open Session at 8:51 p.m.

MOTION #10/05/21 – Moved by Member Sobah and supported by Member Wojtowicz to adjourn the meeting.

A roll call vote was taken. Member Sobah, yes; Member Wojtowicz, yes; Member Aquino, yes; Member Bednard, yes; Member DeMuyneck Zech, yes and Member Pyden, yes. **Motion carried.**

Meeting adjourned at 8:57 p.m.

Respectfully Submitted,

Elizabeth Pyden, Secretary
Board of Education

**CHIPPEWA VALLEY SCHOOLS
BOARD OF EDUCATION – REGULAR MEETING
Administration Building
April 18, 2022**

President Bednard called the meeting to order at 6:31 p.m. and the Pledge of Allegiance was given.

Present: Members Aquino, Bednard, DeMuyneck Zech, Pearl and Pyden
Absent: Members Sobah and Wojtowicz (Excused)
Also, Present: Mr. Roberts, Mr. Sederlund, Dr. Brosky, Dr. Blanchard, Mr. Sibley,
Ms. Licari, Dr. Langlands, Ms. Blain, Ms. Monnier-White and Ms. Adlam

Additions/Deletions - None

Recognition/Presentations

- Superintendent Ron Roberts introduced the Chippewa Valley Schools members of the Macomb All Academic Team. This honor is based on the student's GPA and SAT scores. Along with the MISD, Macomb Daily and Macomb Principals, these students represent our district.

Chippewa Valley H.S.

Joseph Pelky (National Merit Scholar finalist)
Jenna Blair
John Jeffers
Jack Matczak

Dakota H.S.

Aidan Deacon
Ashton Kushner

- Superintendent Roberts introduced All State and State Champion wrestlers from the Dakota High School Wrestling Team.

Dakota High School

Caleb Weiland State Champ (Undefeated this year)
Ozia Wilson
Fritz Mueller
Drew Astorga
Orion Wilson Academic/All State
Aiden Criteser Academic/All State
Anthony Coleman Academic/All State
Mr. Ed Skowneski Coach

MOTION #04/01/22 – Moved by Member Pearl and supported by Member Aquino to approve the General Consent Agenda to:

- Approve Minutes of the Regular Meeting held on March 21, 2022.
- Approve General Fund, Food Service, IAM, Childcare, Camps/Clinics Check Register in the amount of \$2,273,940.47.
- Approve Debt Fund Check Register in the amount of \$59,432,668.96
- Approve Wire Transfers, ACH and Payments Report in the amount of \$7,652,712.20.
- Approve 2018 Building & Site Payments Report in the amount of \$79,282.37.
- Approve Building Activity Check Register in the amount of \$126,613.42.
- Approve Personnel Transactions.

Ayes all, motion carried.

Old Business - None

MOTION #04/02/22 - Moved by Member Aquino and supported by Member Pyden that the Chippewa Valley Schools Board of Education approve Frontline for a 12-month contract of \$59,385.66 for software licensing and support for human resource management of employees' time and attendance and professional development. **Ayes all, motion carried.**

MOTION #04/03/22 - Moved by Member DeMuyneck Zech and supported by Member Aquino that the Chippewa Valley Schools Board of Education approve the vendors below for the purchase of \$287,608.28 worth of various types of commercial kitchen equipment for 17 buildings:

Vendor	Amount
Gold Star	\$ 164,285.31
Stafford Smith	123,322.97
TOTAL COST	\$ 287,608.28

Ayes all, motion carried.

MOTION #04/04/22 - Moved by Member DeMuyneck Zech and supported by Member Pyden that the Chippewa Valley Schools Board of Education approve the low bidder, Unique Clips, to supply and install playground mulch in the total maximum cost of \$67,410.00. This contract also allows for five annual contract extensions. **Ayes all, motion carried.**

MOTION #04/05/22 - Moved by Member Aquino and supported by Member Pearl that the Chippewa Valley Schools Board of Education approve the attached resolution to adopt the 2021-2022 MSBO Bus Purchasing Program and that the reading of the resolution be waived. **Ayes all, motion carried.**

MOTION #04/06/22 - Moved by Member DeMuyck Zech and supported by Member Pyden that the Chippewa Valley Schools Board of Education approve the purchase of 13 total school buses from Hoekstra Transportation Inc. and Holland Bus Company, as follows:

Holland Bus Company (Holland, MI):

Three (3) 2023 Blue Bird Front Engine 89-Passenger Transit Buses with 2 rows each of integrated child restraint seats, additional safety lighting and cameras at \$129,574.53 each.

Two (2) 2023 Blue Bird Front Engine 89-Passenger Transit Buses with storage compartments, along with 2 rows each of integrated child restraint seats, additional safety lighting and cameras at \$131,952.53 each.

Two (2) 2023 Blue Bird 77- Passenger Gasoline Engine Transit Buses with 2 rows each of integrated child restraint seats, additional safety lighting and cameras at \$112,786.53 each

Hoekstra Transportation (Grand Rapids, MI):

Three (3) Thomas Saf-T-Liner C2 65-passenger school buses with integrated child restraint seats, front wheelchair lift, additional cameras at \$113,816.00 each.

Three (3) Thomas Saf-T-Liner C2 77-passenger school buses with integrated child restraint seats, front wheelchair lift, additional cameras at \$111,538.00 each.

The total for this purchase would be \$1,554,263.71

Ayes all, motion carried.

MOTION #04/07/22 - Moved by Member DeMuyck Zech and supported by Member Aquino that the Chippewa Valley Schools Board of Education approve Transfinder for a three- year contract for an improved GIS map bus routing, navigation, field trip management, and parent notification system for a total cost of \$155,667. This contract also includes software licenses, upgrades, and hosting services, in addition to data and project management, training, and professional route implementation services. **Ayes all, motion carried.**

From the Community

- Mr. Stanley Shipley (district parent) addressed the Board of Education.
- Ms. Jennifer Maruri (district parent) addressed the Board of Education.
- Mr. Lewis Miles, III (district parent) addressed the Board of Education.
- Ms. Melody Perrin (community member) addressed the Board of Education.
- Ms. Sandra Hernden (district parent) addressed the Board of Education.
- Ms. Monica Radyko (district parent) addressed the Board of Education.

Union Communications – None

Administration Reports-None

Curriculum Reports – None

Of and By Board Members

- Member DeMuyck Zech inquired about the timeline and process for selecting a new Athletic Director at Dakota High School.
- Member Bednard informed board members he will be unable to attend the next Board of Education meeting.

MOTION #04/08/22– Moved by Member Pyden and supported by Member Pearl that the meeting be adjourned into Executive Session (*8.b. – Student Expulsion Hearing*)

A roll call vote was taken. Member Pyden, yes; Member Pearl, yes; Member Aquino, yes; Member Bednard, yes and Member DeMuyck Zech, yes. **Motion carried.**

Meeting adjourned into Executive Session at 8:45 p.m.

Meeting reconvened into Open Session at 9:11 p.m.

MOTION #04/09/22– Moved by Member Bednard and supported by Member Pearl that the Chippewa Valley Schools Board of Education conducted a hearing on April 18, 2022, in a closed session concerning the Administration’s recommended expulsion of Student, 04-18-2022;CVHS-01.

The Student and the Student’s parents had been advised on the charges against the Student in writing, and had been advised of their due process rights. The Student was provided with all due process rights required by law and District policy.

The Board has considered all of the evidence presented at the hearing and, based on the evidence, has reached the following conclusion: Student, 04-18-2022;CVHS01, was guilty of: Sections IV.17, ***“Possession of a Weapon,”*** and State of Michigan Revised School Code-*Section 380.1311a (2)*.

THEREFORE, it is resolved that Student 04-18-2022;CVHS01, be permanently expelled from the Chippewa Valley School District. Student, 04-18-2022;CVHS01, is prohibited from entering any premises owned, operated or controlled by the District or attending any District function.

A roll call vote was taken. Member Bednard, yes; Member Pearl, yes; Member Aquino, yes; Member DeMuyneck Zech, yes and Member Pyden, yes. **Motion carried.**

MOTION #04/10/22– Moved by Member Pearl and supported by Member Pyden to amend the agenda.

A roll call vote was taken. Member Pearl, yes; Member Pyden, yes; Member Aquino, yes; Member Bednard, yes and Member DeMuyneck Zech, yes. **Motion carried.**

MOTION #04/11/22– Moved by Member Pyden and supported by Member DeMuyneck Zech to amend the agenda to change Item M. – (8.b. – *To Consider Student Discipline*) to Item M. – (8.h. – *To Consider Material Exempt from Disclosure Under Another Statute*).

A roll call vote was taken. Member Pyden, yes; Member DeMuyneck Zech, yes; Member Aquino, yes; Member Bednard, yes and Member Pearl, yes. **Motion carried.**

MOTION #04/12/22– Moved by Member Pyden and supported by Member Aquino that the meeting be adjourned into Executive Session (*8.h. – To Consider Material Exempt from Disclosure Under Another Statute*).

A roll call vote was taken. Member Pyden, yes; Member Aquino, yes; Member Bednard, yes; Member DeMuyck Zech, yes and Member Pearl, yes. **Motion carried.**

Meeting adjourned into Executive Session at 9:27 p.m.

Meeting reconvened into Open Session at 10:56 p.m.

MOTION #04/13/22– Moved by Member Pyden and supported by Member Pearl to adjourn the meeting. **Ayes all, motion carried.**

Meeting adjourned at 10:57 p.m.

Respectfully submitted,

Elizabeth Pyden, Secretary
Board of Education

EXHIBIT E

AFFIDAVIT OF KENNETH PEARL

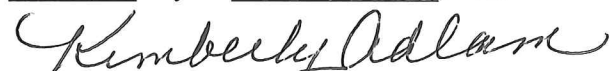
1. My name is Kenneth Pearl.
2. I was appointed as a member of the Chippewa Valley School (the "District") Board of Education (the "Board") on October 15, 2021. Thereafter, I was elected to the Board in November 2022 and have served up to the Present Day. I currently serve as President.
3. I never took any adverse action relative to Sandra Hernden.
4. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
5. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
6. I did not serve on the Board when former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
7. I did not serve on the Board when former District Board Member and President Frank Bednard sent a concern to the Department of Justice. I was not involved in the decision to do so.
8. I have never ratified nor adopted Frank Bednard's communication.



 Kenneth Pearl, Board President

Subscribed and sworn to before me this

24th day of October, 2023



Notary Public, MACOMB County, MI

Acting in MACOMB County

My Commission Expires: 8/2/2029

KIMBERLY ADLAM
 NOTARY PUBLIC, STATE OF MI
 COUNTY OF MACOMB
 MY COMMISSION EXPIRES Aug 2, 2029
 ACTING IN COUNTY OF MACOMB



EXHIBIT F

AFFIDAVIT OF DENISE AQUINO

1. My name is Denise Aquino.
2. I have been a member of the Chippewa Valley School (the “District”) Board of Education (the “Board”) from January 1997 to Present Day. I currently serve as Vice President.
3. I never took any adverse action relative to Sandra Hernden.
4. Given threats of school violence, I can certainly understand how someone would perceive Sandra Hernden’s words and actions as threatening.
5. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
6. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
7. I was unaware, at the time, that former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
8. I did not discuss with Frank Bednard, former District Board Member and President, his individual decision to send a concern to the Department of Justice. The Board certainly did not deliberate or ask Frank Bednard to send this communication.
9. Frank Bednard’s communication was his communication alone and not a communication from the District Board.
10. I have never ratified nor adopted Frank Bednard’s communication.
11. I am of the personal belief that individuals can and should report or refer possible threats, intimidating acts, or harassment to law enforcement for investigation.
12. The Board did not discuss Frank Bednard’s communication with the Department of Justice

whatsoever.

Denise Aquino
Denise Aquino, Board Vice President

Subscribed and sworn to before me this

24th day of October, 2023

Kimberly Adlam
Notary Public, Macomb County, MI

Acting in Macomb County

My Commission Expires: 2 Aug 2029

KIMBERLY ADLAM
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 2, 2029
ACTING IN COUNTY OF Macomb



EXHIBIT G

AFFIDAVIT OF GEORGE SOBAH

1. My name is George Sobah.
2. I have been a member of the Chippewa Valley School (the “District”) Board of Education (the “Board”) from 2000 to the Present Day. I currently serve as Secretary.
3. I never took any adverse action relative to Sandra Hernden.
4. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
5. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
6. I was unaware, at the time, that former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
7. I did not discuss with Frank Bednard, former District Board Member and President, his individual decision to send a concern to the Department of Justice. The Board certainly did not deliberate or ask Frank Bednard to send this communication.
8. Frank Bednard’s communication was his communication alone and not a communication from the District Board.
9. I have never ratified nor adopted Frank Bednard’s communication.
10. The Board did not discuss Frank Bednard’s communication with the Department of Justice whatsoever. Frankly, I cannot recall if I ever even read Frank Bednard’s email, as we were inundated with communication at this time, which was during the global pandemic.


George Sobah, Board Secretary

Subscribed and sworn to before me this

24th day of October, 2023

Kimberly Adlam

Notary Public, MACOMB County, MI

Acting in MACOMB County

My Commission Expires: 8/2/2029

KIMBERLY ADLAM
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 2, 2029
ACTING IN COUNTY OF MACOMB



EXHIBIT H

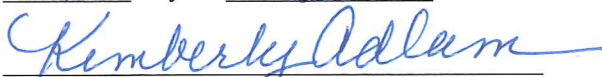
AFFIDAVIT OF BRUCE WADE

1. My name is Bruce Wade.
2. I have been a member of the Chippewa Valley School (the "District") Board of Education (the "Board") from January 2023 to Present Day. I currently serve as Treasurer.
3. I never took any adverse action relative to Sandra Hernden.
4. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
5. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
6. I did not serve on the Board when former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
7. I did not serve on the Board when former District Board Member and President Frank Bednard sent a concern to the Department of Justice. I was not involved in the decision to do so.
8. I have never ratified nor adopted Frank Bednard's communication.


Bruce Wade, Board Treasurer

Subscribed and sworn to before me this

24th day of October, 2023



Notary Public, MACOMB County, MI

Acting in MACOMB County

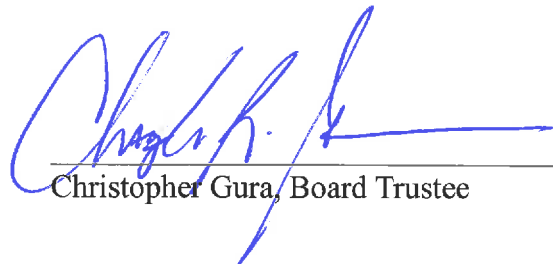
My Commission Expires: 8/2/2029

KIMBERLY ADLAM
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 2, 2029
ACTING IN COUNTY OF MACOMB

EXHIBIT I

AFFIDAVIT OF CHRISTOPHER GURA

1. My name is Christopher Gura.
2. I have been a member of the Chippewa Valley School (the "District") Board of Education (the "Board") from January 2023 to Present Day. I currently serve as Trustee.
3. I never took any adverse action relative to Sandra Hernden.
4. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
5. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
6. I did not serve on the Board when former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
7. I did not serve on the Board when former District Board Member and President Frank Bednard sent a concern to the Department of Justice. I was not involved in the decision to do so.
8. I have never ratified nor adopted Frank Bednard's communication.



Christopher Gura, Board Trustee

Subscribed and sworn to before me this

24th day of October, 2023

Cynthia A. Pharris
Notary Public, Macomb County, MI
Acting in Oakland County
My Commission Expires: 7-20-27

CYNTHIA A. PHARRIS
Notary Public, State of Michigan
County of Macomb
My Commission Expires July 20, 2027
Acting in the County of Oakland

EXHIBIT J

AFFIDAVIT OF SHANNON KING

1. My name is Shannon King.
2. I have been a member of the Chippewa Valley School (the “District”) Board of Education (the “Board”) from January 2023 to Present Day. I currently serve as Trustee.
3. I never took any adverse action relative to Sandra Hernden.
4. The District Board President has no authority to adopt policy outside a Board resolution and/or vote.
5. While the Board President is the spokesperson for the Board, the Board President only has authority to convey official Board resolutions and/or positions.
6. I did not serve on the Board when former District Board Member Elizabeth Pyden sent an email to the director for Harper Woods Department of Public Safety in regards to Sandra Hernden. I was not involved in the decision to do so.
7. I did not serve on the Board when former District Board Member and President Frank Bednard sent a concern to the Department of Justice. I was not involved in the decision to do so.
8. To my knowledge, Frank Bednard’s communication was his communication alone and not a communication from the District Board.
9. I have never ratified nor adopted Frank Bednard’s communication.


Shannon King, Board Trustee

Subscribed and sworn to before me this

24th day of October, 2023

Kimberly Adlam
Notary Public, MACOMB County, MI

Acting in MACOMB County

My Commission Expires: 8/2/2029



KIMBERLY ADLAM
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Aug 2, 2029
ACTING IN COUNTY OF MACOMB