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By Email To: russell@duperelawoffices.info

Russell J. Dupere, Esq.
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Re: Bonnie Manchester

Dear Attorney Dupere:

This office continues to represent Bonnie Manchester in all matters pertaining to her employment with the Ludlow Public Schools.

As you know, in accordance with the provisions of G. L. c. 71, §42, there was held on Thursday, May 6, a Zoom meeting among Principal Monette, you, my client, and me. The purpose was to review Principal Monette's intention to terminate Ms. Manchester's employment as a teacher of twenty (20) plus years-standing at the Paul R. Baird Middle School (the "School"), as announced in the former's letter to the latter of April 16, 2021 (the "April 16 Letter").

I write to follow-up on my earlier letter to you of April 29, 2021 in reply to the April 16 Letter, and to recapitulate my client's position as outlined during the May 6 Zoom meeting.

I will speak plainly.

Long ago Tacitus observed that "criminality, once exposed, has no refuge but in audacity."

While those whom you represent may not be guilty of criminality, they have engaged in audacity. They have done so by aiding and abetting a form of "trans-tyranny" that marshals the administrative apparatus of a public school and sends it into battle against reason and justice, all in the name of a false reason and a counterfeit justice. In so doing, they have wreaked havoc among those families they purport to serve, and done grave damage to those students they purport to help.

Is there anyone involved in this case who can say with a straight face that the School would be on the verge of terminating a teacher with an exemplary record of over twenty (20) years' service in the Ludlow School System[1] for sharing with the parents of an eleven (11) year-old child student record information that touches upon, say, the student's grades, or social development, or mental health?

Hardly. Absent the present culture's fetishistic obsession with all things trans, all the time, we would not be here.

This is not to say that schools, indeed all persons, should fail to be highly sensitive and loving towards transgender and gender nonconforming students, and that safe and supportive school environments free of invidious discrimination should be established as required by Massachusetts law.[2]

But the April 16 Letter reflects neither a concern for the rights and well-being of persons experiencing gender nonconformity in general, nor for the rights and well-being of the particular eleven (11) year-old person at the center of this dispute.[3] What it does reflect is an arrogant effort by Principal Monette, no doubt at the bidding of others, to defend the indefensible: arbitrary and capricious procedures and prerogatives imposed by educational bureaucrats with an agenda that trespass upon, indeed hijack, the sacred space between parent and child in a most delicate area of child development in which they have no business and relatively little, if any, expertise.

Worse, if that's possible, the April 16 Letter reflects the culmination of a year and a half-long vendetta against Ms. Manchester by the School,[4] Principal Monette, and

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[1] Ms. Manchester's personnel file reflects an unblemished record as an able and compassionate teacher.
[2] *See* Chapter 199 of the Acts of 2011, *An Act Relative to Gender Identity*, http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter199; *see also* footnote 8.
[3] Indeed the circumstances of the student in question, who celebrated her twelfth birthday on March 11, 2021, is not even addressed in the April 16 Letter.
[4] The instant dispute must be viewed against the backdrop of a jihad against Ms. Manchester by the School that began on January 27, 2020 with the filing of a bogus "Harassment, Bullying, Discrimination, and Hate Crimes Reporting/Complaint Form" by the then School librarian, Jordan Funke. That Complaint contained false claims against Ms. Manchester and, interestingly enough, named Principal Monette and Superintendent Todd Gazda as witnesses. As of this writing, the so-called "investigation" resulting from Ms. Funke's Complaint against Ms. Manchester remains unresolved and hanging over Ms. Manchester, nearly a year and a half after it was brought and even though Ms. Funke is leaving the School in June for reasons not yet clear.

others that has trampled upon my client's civil and constitutional rights in areas that include, without limitation: (i) her First Amendment rights of freedom of speech, (ii) her First Amendment right to associate freely with parents who seek her collaboration in the exercise of their parental rights, (iii) her Fourteenth Amendment right to due process, (iv) her right as an employee to be free from a hostile work environment, and, quite possibly, (v) her right to be free from age and disability discrimination.

Still worse, the April 16 Letter represents an illegal assault upon the constitutional rights of parents to act as the primary educators of their children and to direct their upbringing (in this case, the upbringing of an eleven (11) year-old child).

But worst of all, the April 16 Letter is hypocritical (to say nothing of being deaf to irony). While wrongly and maliciously accusing Ms. Manchester of being "untruthful numerous times in the investigation of this matter", the letter blithely ignores policies and practices of the School that, in this case (and quite likely in many others), drags the stigma of untruthfulness to new depths by directing school staff to revert to a transitioning child's birth name and corresponding pronouns in communications with the parents in order actively to deceive them.[5]

It should further be noted that the April 16 Letter was composed weeks *after* the School had made a summary decision to place Ms. Manchester on paid administrative leave,[6] and following two investigatory hearings[7] at which Ms. Manchester provided information in good faith, on the (correct) belief that she had violated neither legal nor ethical standards and that a fair investigative process would exonerate her.

A fair investigative process would have done so.

But the investigative process to date has been anything but fair. Rather, it has taken on all the characteristics of a prejudicial conclusion desperately in search of a rationale. For example, reasonable requests made by Ms. Manchester through counsel that she be notified of the areas of inquiry in advance - so that she might be better prepared and the inquiry more fruitful - were summarily rebuffed by the School. Further, the ensuing investigative process as a whole smacked of an effort to entrap Ms. Manchester – from investigators posing questions the answers to which they already knew, to terminally vague questions, to depriving Ms. Manchester of access to her records and hence the opportunity to refresh her recollection, to a variety of other "gotcha" stratagems. Even FBI agents laying perjury traps do not try this hard. Simply

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[5] *See, e.g.*, the March 1, 2021 email from the School's guidance counselor, Marie-Claire Foley, to the eleven (11) year-old student and a cohort of her teachers, directing them as follows: "Raymond [Brenna] is still in the process of telling his parents *and is requesting that school staff refer to him as Brenna and use she/her pronouns with her parents and in written emails/letters home.*" [Emphasis supplied.]

[6] The decision to place Ms. Manchester on paid administrative leave was communicated to her electronically in a letter from Principal Monette dated March 19, 2021.

[7] The first investigatory hearing was held on March 25, 2021; the second on April 14, 2021.

put, the transcripts of the two investigatory hearings reflect more an effort to entrap Ms. Manchester rather than an honest effort to arrive at the truth.

So, if Ms. Manchester must answer for a good deed done to an at-risk eleven (11) year-old child and her family, I offer the following as my client's detailed response to the April 16 Letter in which Principal Monette sets out the grounds of Ms. Manchester's pending termination in three (3) enumerated paragraphs.

In the first, Principal Monette accuses Ms. Manchester of sharing *with that student's parents* "sensitive confidential information about a student's expressed gender identity" (i) "against the wishes of the student", (ii) against "the direction of the Guidance Counselor", (iii) "in contradiction to [*sic*] the DESE guidance",[8] and (iv) without consulting "colleagues, the administration, or the student".

This is nonsense.

Where to begin?

Let us start with the "DESE guidance", to which the letter adverts, and to the section that addresses "Privacy, Confidentiality, and Student Records", the gravamen of the charge against Ms. Manchester contained in paragraph 1. On that subject, the DESE guidance provides in pertinent part as follows:

> A student who is 14 years of age or older, or who has entered the ninth grade, may consent to disclosures of information from his or her student record. *If a student is under 14 and is not yet in the ninth grade, the student's parent (alone) has the authority to decide on disclosures and other student record matters*. DESE guidance, p. 4, *citing* 603 CMR §§ 23.01 and 23.07. [Emphasis supplied.]

The School thus finds itself in the absurd position of disciplining a teacher for sharing with the parents of an eleven (11) year-old student information that was part of the student's record, voluntarily disclosed to the teacher by the student, and to which the parents were entitled by virtue of the very DESE guidance upon which the School relies.

This is not an illustration of first-rate minds at work.

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[8] In June 2012, The Massachusetts Board of Elementary and Secondary Education (the Board) directed the Department of Elementary and Secondary Education (the Department) to provide guidance to school districts to assist in implementing the gender identity provisions of Chapter 199 of the Acts of 2011 ("*An Act Relative to Gender Identity*"), applicable to students enrolling in or attending public schools by virtue of M. G. L. c. 76, §5 and regulations issued thereunder. That directive resulted in the Department issuing the "Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment" (the so-called "DESE guidance").

But it gets worse.

In the April 16 Letter Principal Monette contends that the information was shared with the parents "against the wishes of the student". Like so many other assertions in the April 16 Letter, this one too is totally false.[9]

The evidence will show conclusively that on December 14, 2020 following a Google class meeting,[10] the student requested to meet privately with Ms. Manchester. Ms. Manchester, who had been noticing a marked decline in the student's academic performance and who sensed, correctly, that the student might be at risk,[11] promptly scheduled a virtual meeting with her for the following day. At that December 15 meeting, the student opened up with Ms. Manchester about the student's insecurities, social anxieties, and all that was troubling her, including gender identity issues. She volunteered to Ms. Manchester that it was difficult for her to begin a conversation with her parents about these matters. Ms. Manchester offered to intercede with her parents on the child's behalf. The child readily and gratefully accepted.

As a result, Ms. Manchester promptly communicated with the parents about the difficulties the child was confronting and her own concerns about the child's depression and mental health. Shortly thereafter, in a December 21, 2020 email to some of her child's teachers and to the Superintendent, the child's mother stated the following:

> "It has been brought to the attention of both Stephen [the child's father] and myself that some of [the child's] teachers are concerned with her mental health.
>
> I appreciate your concern and would like to let you know that her father and I will be getting her the professional help she needs at this time.... We request that you do not have any private conversations with [the child] in regards to this matter. Please allow us to address this as a family and with the proper professionals."

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[9] But even were Principal Monette's allegation true, and it manifestly is not, it is not the wishes of an eleven (11) year-old student that control. A student under fourteen (14) years of age who has not entered the ninth (9th) grade is not an "eligible student' under applicable Massachusetts law. *See* 603 CMR §23.02. As such, it is not the "wishes of that student" but rather the parents who by law exercise access to, and control over, information in the student record. *See* 603 CMR §23.07(2).

[10] The drama of this case has largely been played out in the parents of an eleven (11) year-old student, context of the CCP (Chinese Communist Party) Virus, also known as COVID-19, also known as the pandemic, an environment where students have grudgingly been allowed to attend school virtually - in many instances long after scientists, doctors, and other health care professionals had urged their return to in person learning - and where teachers unions as a whole (how to say it kindly?) have not exactly covered themselves in glory by their conspicuous failure to place the interests of students ahead of their own.

[11] Even a cursory perusal of Ms. Manchester's personnel file will reveal not only an exemplary record as a teacher but also a particular charism for attracting and healing at-risk children.

Soon thereafter, the parents began making arrangements for the child to be seen by a professional counselor, under whose care the child remains as of this writing.

Thanks to the actions of Ms. Manchester, a child's life may have been saved. But Principal Monette in the April 16 Letter maintains that all this is unacceptable, as it was done, *inter alia*, "against the wishes of the Guidance Counselor".

So let us consider the guidance counselor, and the standards that might apply to her role. At the outset, we might ask: Since when do the wishes of a "guidance counselor" trump the rights of parents to direct the upbringing of their children, especially children who are eleven (11) years-old? And when in the history and where in canon of American education has it been a prerequisite that teachers, traditional bridges between students and parents, consult with (must less conform to the wishes of) a school guidance counselor before communicating with parents about matters affecting their children, particularly vital matters, as here, involving the child's gender identity?

Certainly not since the ASCA (American School Counselors Association) promulgated its Ethical Standards for School Counselors that advise in all decisions (i) consideration of the child's developmental and chronological age and (ii) obeisance to the rights of parents "to be the guiding voice in their children's lives." *See infra*, p. 11.

Not even the DESE guidance, laser-focused on the rights and sensibilities of transgendered and gender nonconforming students, contains such a requirement, contrary to the assertion of Principal Monette.

But perhaps the Ludlow Public Schools have promulgated to teachers and staff regulations that mandate guidance counselor approval as a precondition for teacher-parent communications? If they have, such a requirement has not been communicated to my client; nor does it form any part of the record before me. It was certainly not among the materials produced by the School's counsel (as required by G. L. c. 71, §42) in response to my letter to him of April 29, in which I requested from the School "all documents relating to the grounds for dismissal".

Put simply, if the School deemed it important that teachers seek the direction of "the Guidance Counselor" before communicating with parents, why not put such a requirement in writing and disseminate it among teachers and staff?

Toward the end of paragraph 1, Principal Monette references the so-called "Mariners team meeting" of March 3. Had Principal Monette attended that meeting, Ms. Manchester may not be the only teacher or administrator facing termination. The segment of the meeting that Ms. Manchester was able to observe (she had to leave early to attend a doctor's appointment) was characterized by unprofessionalism, disorganization, and chaos. Further, in the time during which Ms. Manchester participated, the subjects of (i) the student, (ii) "the email" (whatever that means), and (iii) the notification of the

student's parents were never raised, much less discussed, contrary to Principal Monette's sly and inaccurate assertions.

In the second enumerated paragraph of the April 16 Letter, Principal Monette hones in on what might be characterized as "process crimes," contending that Ms. Manchester was "untruthful during the investigation of this matter." Two examples are cited: the first when Ms. Manchester at the March 25 investigatory meeting purportedly denied that she had had "communication with the parents regarding the content of *the email*" [emphasis supplied] only to be followed by an admission at the meeting on April 14 that she had "informed the father that [the student] was changing his name"; the second when Ms. Manchester stated she had not made "a copy of the email" although, in Principal Monette's view, "you clearly made a copy of the email" and sent it to your counsel.

It is axiomatic that those inclined to accuse others of untruthfulness ought themselves be truthful, and scrupulously so (*cf.*, footnote 5); moreover, they ought to be precise in their own use of language.

The first example of Ms. Manchester's purported untruthfulness cited by Principal Monette depends entirely upon one's interpretation of Ms. Manchester's response to two (2) similar questions posed to her at the March 25 investigatory meeting:[12]

> Interrogator: Did you share **the email or content of it** with anyone else outside that group of teachers that received it?
>
> Ms. Manchester: No, other than my monitor [Maddie Bragga] ....

As a preliminary observation, it is clear from the transcript of that March 25 meeting that Ms. Manchester's recollection of events would have been aided and enhanced had she access to her records, which the School denied her: [13]

> Ms. Manchester: I'm just going to say because I was blind-sided by this whole thing and was not told why I was put

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[12] A review of the transcript of that March 25 meeting reveals its purpose, articulated at the outset by the principal interrogator:

> "So we are looking into the dissemination of confidential information from a student that was disclosed um.. you know, against the student's wishes to the parents",

later amplified by Principal Monette as follows:

> "... so, as stated in the letter it was conduct unbecoming of a teacher for inappropriate miscommunication [*sic*] with a student's family."

[13] The School blocked Ms. Manchester's access to her School account and email on March 19, 2021.

> on administrative leave at all, um, I will hear your questions, I don't know if I can answer them, I have no access to any records, nor did I know the subject matter.
>
> Interrogator: Ok...um..there..there's just questions about a student that you teach so...
>
> Ms. Manchester: I will answer … to the best of my ability. I have not access to my records.

When Ms. Manchester's interrogator first raises the subject of "the email", it is clear that the words "the email" refer to an email authored by Marie-Claire Foley:

> Interrogator: Did you receive an email from Marie Foley about this student on or about March 1, the day the students came back?
>
> Ms. Manchester: Um...I don't know the date. I received an email from Marie-Claire. I don't have my records.
>
> Interrogator: Ok maybe if I read and see if it will jog your memory. The student sent an email to all the teachers, do you remember receiving an email from the student saying that I would like to be called Raymond, that's basically the jist of it.
>
> Ms. Manchester: Yes
>
> Interrogator: Then Marie's was written shortly after that..um and it basically states that the student was still in the process of telling the student's parents and is requesting that school staff refer to him as Brenna and to use she/her pronouns with the parents, etc. Does that email sound familiar
>
> Ms. Manchester: Yes
>
> Interrogator: Did you share **the email or content of it** with anyone else outside that group of teachers that received it?
>
> Ms. Manchester: No, other than my monitor who Brenna had told my monitor to call her Raymond. I don't remember who was on that email, but I don't talk to anyone outside my team really.

> Interrogator: So it was Gregg, Augusta, Bonnie, Samantha, Michelle, Andrew, Suzanna, and Todd Ostowski and it came from Marie just to that group?
>
> Ms. Manchester If that is what's there.
>
> Interrogator: So it was the monitor in your classroom?
>
> Ms. Manchester: Yes.
>
> Interrogator: Is that the person in your classroom?
>
> Ms. Manchester Yes.
>
> Interrogator: And who is that person Bonnie?
>
> Ms. Manchester: Maddie Bragga.
>
> Interrogator: So, you didn't share **the email** or discuss it outside of the group of people that received the email?
>
> Ms. Manchester: **No**.

A fair reading of the above interrogation shows definitively that the term "the email or content of it" refers not to the student's email of February 28 but to guidance counselor Marie-Claire Foley's email of March 1, and that Ms. Manchester understood the questions as such. Further, the operative definition of the verb "to share", the word the interrogator uses in both critical questions posed to Ms. Manchester, is commonly understood to mean "to tell someone about something."[14] Again, it is clear from the transcript that Ms. Manchester understood it as such. Putting the two together, as of March 25 Ms. Manchester fairly and honestly understood the two (2) questions to be directed at whether she had told, related, or discussed with others the fact and content of Marie-Claire Foley's email of March 1.

Her response that she had not done so was absolutely truthful. For one, Ms. Manchester had no reason to be untruthful. In her communications with the student's father at the latter's workplace later in the week of March 1, she had never shared, discussed, told, related or even mentioned to Mr. Foote the existence of the March 1 email of Marie-Claire Foley or its contents, *qua* contents. In her conversation with Mr. Foote, Ms. Manchester had simply informed him that his child was changing her name. There was no discussion of the contents of that March 1 email, nor even mention of its existence.

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[14] The *American Heritage Dictionary of the English Language* (Fourth Edition) (Houghton Mifflin Company, 2000) defines the transitive verb "to share" as follows: "... 3. To relate ... to another or others."

Further, the information that Ms. Manchester now stands accused of communicating to the child's parent could not be said to be either the exclusive "content" of the March 1 email nor uniquely associated with it. That information had multiple sources, of which Ms. Foley's March 1 email was only one. The information concerning the student's "new name" and preferred pronouns had formed the content of the student's email of February 28, distributed to a cohort of School staff. In an environment like the Paul R. Baird Middle School, where sound travels faster than light, that information had been widely disseminated among the student's peer group and other members of the School staff by mid-week. By the time Ms. Manchester informed the student's father that his daughter was changing her name, that information was "old news" and had aged long past the point where it could be said to be exclusively associated with, much less inextricably linked, to "the content of the email" of March 1 (assuming it had ever attained such status). Put another way, the fact of the student's name change was hardly exclusive "content" to which Marie Claire Foley's email of March 1 laid claim.

In short, taking all of this in the light least favorable to Ms. Manchester, the *worst* that could be said is that her two responses were incomplete, reflecting the ill-equipped nature of the tribunal, the terminally vague and imprecise nature of the questioning, and the inability of the person interrogated to refresh her recollection by access to relevant records.

For the School now to seize upon this nit as an example of my client's untruthfulness, as it has done, is to cavil. Worse, it tells one all one needs to know about the captiousness and bad faith that the School has for the last year and one-half brought to bear in dealing with my client.

The second example of Ms. Manchester's purported untruthfulness cited by Principal Monette relates to the former's denying having "made a copy of the email". Curiously, Ms. Manchester is accused of making that denial contemporaneously with her counsel's frank acknowledgement at the April 14 meeting that he possessed a copy. This is not the stuff of untruthfulness. It is the stuff of miscommunication. One reasonable explanation for Ms. Manchester's response is that to people of her age and experience, the verb "to copy" is traditionally associated with using a photocopier. It is not necessarily the verb that one employs to connote duplicating a document digitally by means of a screen shot, or capturing an image electronically. The School may consider this explanation mere semantics, but semantics, and precision, matter; particularly where, as here, the School has announced its intention to terminate for "untruthfulness" an otherwise exemplary teacher of many years' service with no history of dissimulation.

The third enumerated paragraph in the April 16 Letter is a sloppily worded "throw away" paragraph (it should have been thrown away) consisting of a congeries of dogmatic certitudes and charges against Ms. Manchester, from violations of the Family Educational Rights and Privacy Act (FERPA), to unspecified violations of state law and regulations, to the allegedly illegal removal of an email from the workplace.

Its elements can be dealt with summarily.

FERPA is not implicated in this case, and a principal of a school should know that. For one, the Act itself encompasses only an "eligible student", defined as a person eighteen (18) years of age or older. For another, the whole legislative thrust of FERPA is designed to extend certain rights *to parents* with respect to their children's educational records, buttressing their rights to act as the primary educators of their children. Its intent is not to enable school administrators to usurp those rights.

Regarding Principal Monette's accusation that Ms. Manchester removed material from the workplace "in violation of state law and regulations as well as FERPA," it will be interesting to learn during discovery, should it come to that, how many other teachers (and administrators) of the School, operating remotely during the time of COVID, removed emails and other materials "from the workplace" in the ordinary course.

Concerning the allegedly "clear" violation of the student's rights, the April 16 Letter ignores the plain language of applicable Massachusetts law, as well as the DESE guidance itself, that recognize the authority of the student's parents alone to decide on disclosures and other student record matters. *See* footnote 9.

As to the charge of "releasing student information to individuals [the parents] of the eleven (11) year-old student] who did not have a right to view the information", it is the School that runs afoul not only of applicable Massachusetts law but also of recognized professional guidance in this area. The ASCA Ethical Standards for School Counselors promulgated by the American School Counselors Association, previously cited, advises school counselors as follows:

* * *

> f. Recognize their primary ethical obligation for confidentiality is to the students but *balance that obligation with an understanding of parents'/guardians' legal and inherent rights to be the guiding voice in their children's lives.* School counselors understand the need to balance students' ethical rights to make choices, *their capacity to give consent or assent, and parental or familial legal rights and responsibilities to make decisions on their child's behalf.* [Emphasis supplied.]

* * *

Lastly, the School's contention that Ms. Manchester, in the context of legal proceedings that could result in adverse civil consequences to her, should have first sought permission from the very school system initiating the adversary proceedings before providing her counsel with a copy of the material at issue, reflects an ignorance of

hundreds of centuries of Anglo-American jurisprudence and due process that is truly stunning, even for public school administrators.

In sum, reduced to its essence, the position of the School amounts to this: Ms. Manchester must be punished for legally disclosing student record information to parents of an eleven (11) year old child in circumstances where, as here, (i) dialogues between Ms. Manchester and the parents, and Ms. Manchester and the student, were well underway long before the issue of the student's gender identity surfaced, (ii) the parents had an absolute legal right to the student record information conveyed to them by Ms. Manchester, (iii) the student was at risk, (iv) neither the parents nor the student interposed any objection to the disclosure of that information[15], (v) nothing in the record so much as hints at any sort of dysfunctionality on the part of the parents of the kind that would justify School intervention, (vi) Ms. Manchester has the complete and enthusiastic support of both parents (*see* footnote 15), and (vii) disclosure of the information culminated in the parents providing the student with much needed professional help.

In my view, neither the School institutionally, nor those involved with it personally, can afford the mistake of terminating Ms. Manchester on the grounds stated in the April 16 Letter.

Very truly yours,

Frank L. McNamara, Jr.

FLM,Jr.:ss

[15] To the contrary, the evidence will show that it was the at-risk student who initially approached Ms. Manchester in December of 2020 seeking her assistance in communicating with her parents, not the other way round; as for the parents themselves, in a letter to Principal Monette dated May 5, 2021 they have lauded Ms. Manchester for initiating the disclosure of which she now stands accused.