

BOARD OF ETHICS

Unofficial

The Board of Ethics held a special meeting on December 8, 2010 at 7:00 p.m. which was called to order by Chairperson Tom Fitzpatrick in the Town Manager's Conference Room at 505 Silas Deane Highway, Wethersfield, CT.

Present from the Board: Tom Fitzpatrick, Sheila Hennessey, Heidi Lane, Mark Dean and alternate Board members John Lepper and Lorinda Coon.

Attorney for the Board – Attorney Andy Houlding

Chairman Fitzpatrick: We are going to reconvene this meeting of the Board of Ethics and I would like to ask if there is a motion to formally close the public hearing portion, for purposes of allowing the Board to discuss and vote on matters before the Board.

Female voice: So moved.

Male voice: Second.

Chairman Fitzpatrick: All in favor? (Ayes were heard.)

Female voice: Discussion?

Chairman Fitzpatrick: Discussion?

Female voice: We're going to deliberate in closed session?

Chairman Fitzpatrick: No.

Female voice: Oh, so what are we

Chairman Fitzpatrick: We're closing the public hearing portion of it.

Female voice: I get ya, thanks.

Chairman Fitzpatrick: You're welcome. All opposed? Okay. So, the public hearing portion of this has been closed and I'll open the floor to deliberation on the issues that are before the Board. Are there any comments or motions to be made?

Ms. Hennessey: Since we have two respondents, Mr. Chairman, would it be a better practice to discuss one rather than try to blend the situation?

Chairman Fitzpatrick: That's fine. Any concerns on the part of the Board? Okay. So for purposes of discussion, if we can take up the complaint against Ms. Stacy Hodges, is there any discussion?

Female voice: Okay. I guess I'll start. To begin with, one of the things I considered, of course, that there had to be clear and convincing evidence. And from reading everything, it has to be clear, direct and weighty. So, when you look at the evidence, I saw, there are three major, the three allegations: conspiracy to change the grade; alter the transcript; misappropriation of public funds. To get the conspiracy out of the way let me, I didn't see a conspiracy. So, now taking Mrs. Hodges individually, I don't see how she had any knowledge or was involved at all in the changing of the grade or the altering of the transcript. I also don't see any misappropriation of funds. In the evidence, there was the May 13, '08 Board of Ed minutes and in there it said that the summer school was going to be paid for all the Town residents based on the grant and I take that to include the graduate or non-graduate. So, that is, so I don't think she was involved in the altering. She was never asked to pay. She was never given a bill.

The summer school course was going to be paid for any Town resident and I think there's the evidence against her was not clear and convincing.

Chairman Fitzpatrick: Are there any other comments, discussions? Mrs. Hennessey?

Ms. Hennessey: In the last week, I guess along with everybody else, I was trying to go through many pages of testimony and briefs filed by counsel, which were helpful, and I appreciate the position of counsel and zealously advocating for their clients. Sometimes its letters or prolonged discussions but, it's necessary to get through these because this is a serious matter. After hearing all the evidence and I think there's agreement on what constitutes clear and convincing evidence. It seemed as though the counsel on both sides were in agreement as to what that standard was, and I won't repeat it because it's set out in the briefs. But, I made a couple of assumptions, that, as I say, after reviewing all of the evidence, that the student in question at the time that the service was provided was not a Wethersfield student. He was a Wethersfield graduate. I think that changes the character of the representation of services to a Wethersfield student. We had a lot of discussion on whether or not it was appropriate for a graduate to be offered these courses, any summer courses, actually, (inaudible) should be extended. I felt after reviewing all of the evidence and thinking about it and looking at the statements of policy and so forth, it was inappropriate for a graduate of Wethersfield High School to receive an additional course in the summer school setting. With all of the discussion as to whether or not summer school courses were free to students at Wethersfield High School in the summer of 2008, I had no difficulty because I don't think that was established, but if you're speaking of a former student, I think you're in a different classification altogether. I think the parents were concerned about their son's progress, rightfully so, and they made some calls to try to figure out what to do. But I also think you have to take into consideration the fact that there was testimony that the student had graduated, even though additional I believed Mr. Kohlhagen and perhaps Mr. Hodges expressed some concern about whether there had been an actual graduation. I did not find that testimony to be credible. The student had graduated on June 20, 2008. Based upon that, I think that the course that that student took, whether it was a regular summer, regular in the sense of offered through the summer school catalogue or through the Virtual Learning Academy course, I think that the student, or family or student, should have been charged for it. It should not have been paid for by public funds, even though the public funds might have been from the Board of Education budget, they were public funds in terms of (inaudible). I don't know to whom consensually to suggest should have been informed of that, but I think in terms of the background, Mrs. Hodges is a long term Board of Education member and the fact that she knew her son graduated, that that should have been a part of her consideration. And I would suggest as part of the recommendation to the Town Council, if we are to make one, if there is a finding that there has been any violation of the Ethics Code, that that payment be sought. As far of the change of grade is concerned, I think that the issue, at least in my mind, is not quite as clear, however, I looked at all of the conversations and emails that transpired, specifically in February of 2008 between Mr. Kohlhagen and Mr. Moore and it appeared to me that the conversations that Mrs. Hodges had were with, pretty much with Mr. Kohlhagen rather than others. There was an influent conversation, I believe, in September 2008 between Mrs. Hodges and Mr. Moore at a school event. And I think as a result of those conversations and the suggestion that this VLA course should have some standing, that there wasn't understanding, at least as I reviewed the evidence because, an understanding that that grade would somehow be reported on the student's transcript. It appears from all of the evidence, although we never saw the transcript, it appears from the testimony that we have, that there was a change in the grade. I'm making that assumption based only upon testimony that was presented. And I think that was entirely inappropriate and far outside any policy that would have been anticipated for any graduate of Wethersfield High School. Dr. McDowell testified that there was codification of that policy, but I can't, I think it's strange to think that that was not the policy prior to that codification, that there would be no changes in the student's transcript once the student had graduated. And we had testimony from Mr. Moore (inaudible), Dr. Negroni, I think Ms. Bryant also, that none of them had any knowledge of any changes in transcripts of students after the student had graduated. Based upon that, I think that, there was a violation of the Ethics Code, as much as a benefit was received both in terms of the payment for the course and then a benefit was given to the student through the case made out by the parent as far as any change of grade, so I do find that, I do feel that there was a violation of the Ethics Code by Mrs. Hodges.

Chairman Fitzpatrick: Are there any others?

Male voice: After reviewing all of this testimony and whatnot, I think I have basically come to the conclusion, or did not find any evidence of any conspiracy to commit any wrong doing. I did not find any misappropriation of funds, but I was concerned about the summer course. In my view, a person who met the requirements for graduation is graduated from the school, they are out of the system, they are not entitled to any program thereafter except in a situation where anybody as a citizen of the Town can go and monitor a course at the high school if there's space in the school. But this student had already been accepted at (inaudible) Academy for post graduate course. He graduated from Wethersfield High. There was no reason to have to take another course other than just maybe to get a better grade, but I think the grade that's earned is the one that's earned over the four year period. I'm sure that there are some of you, I know I would love to go back and take some summer courses for some grades over the years, but it's not going to happen and it shouldn't happen. What I acquired at that time is what I acquired and that's it. So, I feel pretty strongly about that point. I guess pretty much that's it. We have some others here before the Board. Thank you.

Male voice: I look at these complaints against Mrs. Hodges and break them down into two parts, the VLA course and payment for and the change of the transcript. I'm not as concerned about the VLA course and the payment of it. It is unusual to pay for a graduated student and it certainly would be better practice if something like that were brought to the attention of the Board, but we did have a grant, we did have some vague instructions. We do have the issue of the Superintendent's authority and if you have a parent who's upset about an issue and if the Superintendent is trying to resolve an issue and, you know, you always have to worry about the alternative being litigation and complications and expense, does the Superintendent have the ability, does he have a little bit of discretion and autonomy to come up with a remedy? And I guess I am not so concerned with the VLA course being provided for educational purposes and it would have been better to handle it differently, but I guess I would not find an ethical violation for that. And there is also the kind of academic question as who received the benefit. Was it the student who received the benefit or is it the parent? So, putting those issues together, I'm not so concerned about it. I am concerned about the issue, and I think it's much more serious, about the changing of the grade on the transcript. I do accept the evidence, even though we have not seen the transcript, that there was a change. And Mr. Moore testified that there had been a change, that he had made to the transcript. The issue for Mrs. Hodges is whether she had any involvement with that. Nobody, Mr. Moore, Mr. Kohlhagen said that Ms. Hodges was involved with any discussion concerning the change of the transcript. There certainly is circumstantial evidence that somebody could look at, and there are inferences that can be made to suggest that she knew and that there was an understanding. There's also some evidence on the other side of the equation and if the standard of the proof or a preponderance of the evidence, you might come to one conclusion, but we're looking at an issue of clear and convincing evidence. And, I guess that I feel that in order to find that Mrs. Hodges was part of an arrangement to change the transcript, I think I would have to speculate and fill in the blanks as to what the evidence showed and I don't think that I could reach clear and convincing evidence in Mrs. Hodges' case based on the evidence before us. So, I would not find that there is a violation of ten dash sixty-six in Mrs. Hodges' case. I am somewhat concerns about some of the evidence. I do have some concerns in finding a lack of sufficient proof. That's not exoneration. What that means is that the case against Mrs. Hodges, in my view, is not proved and so I would, on all counts against Mrs. Hodges, you know, subject to hearing any additional comments from anybody else because I'm probably ninety-five percent certain, but somebody may have a point that may have some weight, I would lean towards not finding Mrs. Hodges has violated any rule.

Female voice: I saw really three categories. The first, the idea that the student was allowed to take the course after graduation, I'm really not concerned about that. First of all, I think it was not clear to some people in June, late May or early June, that the student would graduate, that the student would pass the course. I think it's only in hindsight that that has become an issue and really, if you look at the complaint, I don't even see in the complaint taking the course in and of itself being, claimed to be an ethical violation and I don't think it was. I think a mistake was made. I don't think in general, the school does or should offer summer courses to students who graduated, but I just think that perhaps it was a mistake, a misunderstanding. Again, it's only in hindsight that that has become a major issue. As far as the

payment, I don't see that as an issue at all. As far as the grade change, that is a serious issue and it's certainly not something that should happen. On this evidence, I would not find an ethical violation by Stacy Hodges, certainly not on clear and convincing standard. I wouldn't find that, I have to say that a parent does not lose her right to advocate for her child because she steps forward and takes a position of leadership in the Town. By the same token, someone who steps forward and accepts a position of leadership and because of that, knows people, knows who to call, I don't think that's an ethical violation either. So, I guess what I'm coming down to, there may have been mistakes, there may have been some in hindsight, some violations of policy that should not be repeated. I would not find an ethical breach with respect to Stacy Hodges.

Chairman Fitzpatrick: Two points that I would like to address, I guess the first one is the misappropriation. Going through the evidence, I looked back at the grants that were written and also the report of the, I'm trying to see what the title is, the summary after the first year of the grant, to cover the period, and there's no mention made of the course in there. My understanding from Dr. Negrone is that the, it had to be put into a separate fund or a separate account because there were problems with the accounting system here in Town. And I understand that, but what bothers me is that all the other accounts or all of the other monies were able to fall into that account and that it was never reported on the summary and there is no evidence that once the problems were corrected because obviously they must have been corrected given the fact that they were able to produce a document for that account, that there was never any effort made to replace that money or put it into the right account to see whether or not the State would accept that as part of the grant. So, I have some concerns about that in terms of the misappropriation. The other issue that kept coming back to me was that the arguments were made based on the fact that the individual, that the rights of the students were, these were all rights of students. The fact that they could offer courses, that courses were being paid for, and I think that's a big leap to go from saying that somebody that has graduated and I think there's much indication that the student had graduated, that these rights can be attributed to people who have already graduated, in terms of making changes. Also, the point that I guess Mr. Moore and Dr. Zannini had made and we also had the, who had been classified as an expert, Mr. Jansing, Mr. Janus, I can't read my own writing here, they all agreed that the transcript is closed at graduation and so, for to be able to go back and changes these courses seem to me to be a violation. The other thing, and I guess that continued to bother me was that the issue was brought up in late May regarding the concern about the course, probably three or four weeks before the end of the course. The statement was made that the concern was that the student was given, was going to be, that it was an education, it wasn't meant for credit, it was meant for education, or to improve their knowledge of the subject was why they offered the VLA course. What bothered me was that three weeks later or four weeks later when the report card came out, nobody saw a report card and nobody was concerned about it, or they didn't seem to be concerned. I mean, it passed all the way until December, I guess, before anybody mentioned the report card, so I mean, all of that points to the fact that, I guess for myself, that there was a violation that somebody received, or knowingly received a benefit from the Town. So, as a result, I would consider that a violation of the Ethics Code. Are there any others?

Ms. Hennessey: I guess a follow up to that, I had this feeling all through the course of these hearings that the student in question really should not have been referred to as a student. We were talking about issues and circumstances that took place between June 2008 and December 2008 and going into, pretty much what you said Mr. Chairman, going into all the issues of what was available to students, it was a demarcation and that was the graduation and to keep referring to this individual as a student by parents or Mr. Kohlhausen or anyone, I thought was a misnomer and that we shouldn't have even been talking about the student handbook availability because we had passed beyond that point. And the Ethics Code in ten dash sixty-six indicates no governed person shall grant or accept any special consideration. And I felt that there was an exception to the special consideration. There was repeated testimony by every administrator that this was a former student, that this was not the usual practice. Usual practice was not to grant that kind of special consideration to a graduate. If we had been talking about a student who was between their junior and senior year, there would be no issue here. All those summer courses were paid for, but that is not what we're talking about and this is a significant, in my opinion, this is a significant demarcation.

Female voice: Just quickly, the expert, Peter Janus did say that he did not see a problem with a transcript being reopened to insert a summer school grade. I think that Dr. Zannini said the same thing, of course not to change a grade, but to put in a summer school grade. I guess I don't see the problem with him being a student or not a student as critical here. He was getting additional help that, when we look back, was available to Town residents, free of charge. I think there was evidence that the Town knew about it. There was some discrepancy there in the testimony, but I chose to credit the testimony of the people who said that it was known, so I don't see that it was a problem to reopen a transcript and insert a summer school grade. I know that we will get to that a little bit later on, but I don't think that Mrs. Hodges played a role in any of that.

Female voice: Just a few, as far as the payment, even if a mistake was made in terms of payment for that course, I don't think there is any evidence that Mrs. Hodges knew about it or had anything to do with it. So, even if you're concerned about whether it should have been paid under that grant, whether that was proper or correct, or whatever, if it came from the correct account, should it be paid back, I just don't see any, that's been tied at all to Mrs. Hodges. And then on the issue of the student versus former student, I recall, I think it was Cindy Bryant who testified that it does happen to twelfth graders, who finish twelfth grade but have not quite completed the graduation requirements have been known to take summer school courses after, you know, in that last year after they almost completed twelfth grade, and I think that this situation was seen to be that type of situation. Again, I think there was concern and confusion over whether or not he was going to graduate. In hindsight, it became clear that he did, but at the time that the discussions were made, the decision was made to offer him the VLA course, I think it was seen as in that category, a student who was almost there, just needed to finish up a little bit, and I don't see a problem with that.

Chairman Fitzpatrick: Any further discussion? Okay.

Male voice: I just had one thing, Mr. Chairman. While it's not necessarily an issue of ethics, but I did get the feeling going through all of this that there was a real misstep in leadership and management right from the Board right on down to the high school level and I just feel that what we pay for education in Town, things should be a little tighter, a little neater and communication seems to be a problem, too. Communication seems to be a problem in industry everywhere, but you know, that's not an excuse that it can't be improved. It seemed to come through more and more through the testimony that there was just not good communication either verbally or email or whatever and that needs to improve. And, as a said, I just think there were some missteps in leadership and management all the way down the line from the top to the bottom. And I think that some of my colleagues alluded to that, too, just in a different format. That's the way I saw it.

Chairman Fitzpatrick: Any other comments? Okay. Ms. Hennessey?

Ms. Hennessey: I won't beat this point to death, but I have to go back to it. When we're talking about students who have almost completed twelfth grade or were in danger of not graduating that was not the situation that was presented to us in any testimony here. This was not that circumstance. The student had finished, hadn't paid for the course in question, had sufficient credits to graduate and graduated. The fact that someone said they weren't sure that he graduated, as I said, I didn't find that testimony credible. The student had graduated and there really wasn't any dispute on that. And I think that was something, it's important for us to keep in mind here as to whether or not there was a grant being accepted for special consideration.

Chairman Fitzpatrick: Excuse me. Again, I would like to take a minute and go back to the documents that we have regarding the summer program. And again, I have a concern, only because the documents I have here that have been submitted all reflect that this was not considered part of the activity. And when I say that, I say the high school portion continually refers to ninth grade transition academy academic credit retrieval for English and physical education, academic growth for algebra, AP French, a homework club and SAT prep. So, nowhere in these documents is there a discussion or a reference to the VLA course that people keep talking about. When I look at the financial and budget for that was put together, it's also missing from there. So, it seemed to me to be a stretch to include this underneath this,

or to claim to have put this under there and then the fact that it was never actually put into that budget bothers me even more. So, I still continue to have an issue with the budget in terms of the VLA course. And again, all of these programs and all of the testimony so far, I think that people were very careful to talk about and reference students that it was okay for students to take summer courses for free, that it was okay for students to receive certain benefits, and again, even in the grant, it talks about student and I think it's a stretch when we start talking about a person who has graduated as a student. Are there any further comments or discussion? Do we want to consider a motion then?

Ms. Hennessey: Procedurally, we have broken it down into each Respondent. Perhaps we ought to break it down into each allegation. So, for the purposes of discussion, I would move that the Board find that there was a violation of the Wethersfield Code of Ethics, Section Ten dash Sixty-Six by Mrs. Hodges as a governed person under that Code in accepting a special consideration of a course paid for with public funds in the amount of four hundred dollars.

Chairman Fitzpatrick: Is there a second?

Male voice: I'll second it.

Chairman Fitzpatrick: Are there any further discussions?

(inaudible)

Chairman Fitzpatrick: All in favor of the motion, please state by saying aye? (Ayes were heard.) Opposed? (Nays were heard.) Okay. The motion passes by a vote of three to two. Are there any other motions? Seeing none, then we will move on to consideration of the complaint against Mr. Kohlhagen. Is there any discussion regarding this issue?

Female voice: Just going back, one thing. For Mrs. Hodges, there was just that one motion on that one issue?

Chairman Fitzpatrick: Yes.

Female voice: Okay.

Chairman Fitzpatrick: Yes, I didn't see any other motions.

Female voice: But there were other allegations as well, unless we are, I mean that was the misappropriation of funds, but there are other allegations that I think we should get on the record whether we are dismissing them or not.

Chairman Fitzpatrick: Okay. Would you like to make a motion?

Female voice: Well, I make a motion to dismiss the allegations against Mrs. Hodges concerning the changing of the grade of the former student and altering the official high school transcript.

Chairman Fitzpatrick: Is there a second?

Male voice: Second.

Chairman Fitzpatrick: Any further discussion? Seeing none, I'm sorry?

Ms. Hennessey: This was the more difficult question as far as Mrs. Hodges involvement was concerned and I said that I wasn't going to make reference to the clear and convincing standard, but I think I will because there would seem to be an agreement both in the terms of both Respondent and Complainants as to what that standard should be. As far as the State of Connecticut is concerned, the evidence induces in the line of the Trier, a reasonable belief that the facts assessed are highly probably true. Now

that this probability that they are true or exist is substantially greater than the probability that they are false and do not exist. And I think under that standard, it's very difficult in the case of Mrs. Hodges to determine that these (inaudible) can find a reasonable belief that is highly probably true. I am a little distressed by one sentence, but I think I would abstain from proof that I couldn't find.

Chairman Fitzpatrick: Is there any other discussion?

Male voice: Could you please repeat the motion again?

Female voice: A motion to dismiss the allegations against Mrs. Hodges as to the change of the grade of a former student and the alteration of the official high school transcript.

Male voice: And what was the last thing?

Female voice: And alteration of the official high school transcript.

Chairman Fitzpatrick: Are there any other discussion? Seeing none, all in favor of the motion, vote aye and opposed nay. All those in favor? (Ayes were heard.) Opposed? Okay. The motion passes with allegations for, excuse me, the wording was?

Male voice: Dismissed.

Chairman Fitzpatrick: Dismissed, okay, thank you. Okay. Are there any other motions that need to be made regarding this issue?

Female voice: The Code directs that this Board make a recommendation to the Town Council if there was a violation found, so I think it's proper, Mr. Chair, to have a motion as to what the recommendation of the Board is. As far as the finding of the violation of the Code of Ethics, perhaps the Board recommends that Mrs. Hodges be billed or properly invoiced for the cost of the course that was offered in July and August 2008.

Chairman Fitzpatrick: Is there a second?

Male voice: Second.

Chairman Fitzpatrick: Is there any discussion? All in favor of the motion to ask the Council to bill Mrs. Hodges for the cost of the VLA course, the cost that was incurred for the VLA course, all in favor of that motion say aye, opposed nay. Those in favor? (Ayes were heard.) Opposed? (One nay was heard.) Okay, the vote is four to one. Okay. That recommendation will be made to the Council. Are there any further discussions? In the matter of Ethics Violation, the complaint of an ethics violation by Mr. Kohlhagen, is there any discussion on that?

Female voice: Alright, thank you. In looking at the evidence, I don't see how Mr. Kohlhagen had any part in the change of the grade or the alteration of the official high school transcript. It seemed to me that that was Mr. Moore who actually said that (inaudible) he assumed that's what he was meant to do. There was testimony that Mr. Kohlhagen wanted the summer school grade to be reflected on the transcript and it was Mr. Moore who went into details why he suggested blending the grade in which he erroneously stated that Mrs. Fennelly was in agreement with him. That turned out to be inaccurate. And, so his, I think the altering of the official transcript, again, which we have never seen, I think just falls more on Mr. Moore and not on Mr. Kohlhagen. And there's no evidence that this change was at the urging of Mr. Kohlhagen. Mr. Kohlhagen testified that it was his understanding that the individual was going to, the earlier grade that he obtained for the summer, for the summer school course and that that would be reflected. And I saw nothing to indicate that Mr. Kohlhagen had anything to do with the changing of the grade or the altering of the transcript and the only thing that Mr. Moore could show was that he felt that that is what Mr. Kohlhagen wanted him to do even though Mr. Kohlhagen did not tell him to do so.

Ms. Hennessey: I completely disagree with that conclusion. I read that testimony of Mr. Moore at least three times. In it, he indicated that he was directed to change the grade. Those are the words that he used. He was directed by Mr. Kohlhagen to change the grade. As tryers of fact, it comes down to, it's going to come down to credibility of the witnesses. Mr. Kohlhagen testified that that was not what he told Mr. Moore and that the change of grade was not at his direction, so you obviously have two conflicting viewpoints here. Ms. Krieger also testified as to the changing of the grade and she was contacted in December of 2008 and testified, I believe, again I looked over her testimony, that there had been a change. That she had never heard of such a thing taking place before and although she was challenged on her credibility as being a supporter of Mr. Moore, that was the way it was put or something to that affect by Mr. Kohlhagen's Counsel, I didn't find that their joint, their testimony contradicted each other in any way. And, as I said before, there are some elements of Mr. Kohlhagen's testimony not credible. So, I do think, in my opinion, Mr. Kohlhagen did have input into that change situation and although he could not physically make the change because Mr. Moore is the one that has to certify, transcripts that come from the high school, that that was done upon Mr. Kohlhagen's direction, in my opinion.

Chairman Fitzpatrick: Are there any other?

Female voice: I have some comments. I would, on the whole issue of allowing the graduated senior to take a course after graduation, I think that's within the Superintendent's discretion based upon circumstances at the time. I don't think there was any testimony linking Mr. Kohlhagen to the payment and again, I think that payment was a mistake or not within the grant. I just didn't find that it was, that it was directed to be paid in that manner by anyone and certainly not Mr. Kohlhagen. As far as the change in the grade, which I think we all agree may be the most distressing part of this, this is difficult, but it seems to me that the evidence is that Mr. Moore mislead Mr. Kohlhagen in the email with regard to a conversation that he said he had with Mrs. Fennelly that he never had with Mrs. Fennelly. I think it seems to me that Mr. Moore may have misunderstood what Mr. Kohlhagen was directing him to do and I don't, and I would not be able to find, under the clear and convincing evidence standard, that Mr. Kohlhagen directed that the grade be changed.

Male voice: With respect to the VLA course and the payment of it, as I indicated in Mrs. Hodges' portion, I think that's within the Superintendent's discretions so I don't consider that to be an issue. The change of grade is the most serious part of this and the contradiction in testimony between Mr. Moore and Mr. Kohlhagen is, I think, the biggest issue. I'm mindful of the height and standard of proof in this case, but also you're allowed to look at a witness, it's not the quantity of witnesses, it's the quality of the witnesses and Mr. Moore, he did have some discrepancies in his testimony along with the testimony of certain other witnesses. It was contradicted by Mr. Kohlhagen, but I guess the bottom line is, I found Mr. Moore to be the most credible witness during this process. I had some concerns about Mr. Kohlhagen and his testimony. I look at this as a situation, in the military when they have superior officers exerting influence, they call it command influence and that is really what we're talking about here. We're talking about pressure being put on Mr. Moore to do something. Mr. Moore testified, if I recall correctly, that when he first indicated just listing the VLA course on the transcript, he said that Mr. Kohlhagen said that's not good enough. Tie in Mr. Moore's testimony about his discussions with Mr. Kohlhagen, the emails, the general situation, I guess my view is that there was pressure coming down to change the grade, to do something and whether it's the blending of the grade or something higher, a substitution of the grade, anything beyond reporting the VLA course on the transcript is improper. And my feeling is that there is an ethical violation, there is special favor, special treatment. The student or the graduate or whatever you want to call him, there was something that was irregular and that would not have been available to other people in Town and my view would be that it does meet the standard of clear and convincing evidence on the case of Mr. Kohlhagen.

Chairman Fitzpatrick: Are there any other?

Male voice: On that same issue, as Chief Executive Office, Mr. Kohlhagen sure had some involvement here. The buck goes to the top and he had to be involved, but that doesn't let Mr. Moore off the hood either. I think he had said at one point that he felt what he was doing was wrong. Well, he should have done something about it at that point in time. He may have felt that he was putting his career at risk, but

maybe it's the other way around, he may have put his career at risk by not doing anything. So, I think that there's a problem for both of them in this case.

Chairman Fitzpatrick: Any other?

Ms. Hennessey: I did speak before, but to the issue of the special considerations as far as the non-payment of the student or the student's parents for the course, which was generated, I think again, as I looked at the testimony from discussion between Mrs. Hodges and Mr. Kohlhagen with some input from Mr. Moore's testimony, but I don't think, I can say that it was appropriate to suggest that Mrs. Hodges accepted any special consideration without communicating that, she was granted special consideration by Mr. Kohlhagen. Also, on the offering of the course to a graduate without any indication that it would have to be paid for, I do think that that was a special consideration from Mr. Kohlhagen to Mrs. Hodges or to the student. Again, as far as a grade change is concerned, I find it's really upsetting that this could have happened at all and it casts a very bad light on the system as a whole to have anything like this even talked about or done, so and as I said before, I think Mr. Kohlhagen was the initiator of that and as the Superintendent of Schools, I can't even imagine why he would even consider doing that, but I do not believe some of the testimony that he gave. Again, I reviewed Mr. Moore's testimony in detail again several times. He did indicate that he spoke in error in his email with reference to Mrs. Fennelly, that she taken part in discussions and did not agree and so for those reasons, I would support the finding of violation of Section Ten dash Sixty-Six of the Wethersfield Code of Ethics by Mr. Kohlhagen at the time he was Superintendent of Schools.

Chairman Fitzpatrick: I saw some real inconsistencies in the whole argument that was made by Mr. Kohlhagen. Initially, we started off with a phone call to Mr. Moore from Mr. Kohlhagen regarding this issue. Further on, there's an email that was listed in Mrs. Hodges' brief where Mr. Moore indicates, my suggestion is that the grade be adjusted to reflect a "C" for the course, and that's an email to Mr. Kohlhagen. The inconsistency I'm finding is that, you know, you're kind of half in and half out, I mean, you're involved in the process but you're not involved in the process, so, and that's where I struggled with that whole thing. The indication from, again from Mr. Janus, and I go back as an expert witness, is that the Superintendent is the CEO of the school and, you know, as a result, he takes responsibility, there's responsibilities that go with that and it just seemed to me that along the way, it was difficult, as I said, when I saw he was involved but he wasn't involved. He was involved up to a certain point, but he wasn't involved in some of the knowledge and some of the exchanges that were going on, so again, that went to the credibility of the testimony, so, as a result, I think that the grade was changed. The grade was changed through his knowledge and so, as a result, I see that there is a violation of the Statutes. Are there any other comments? Do we have a motion then regarding this violation?

Female voice: Do you want it in two parts?

(inaudible)

Chairman Fitzpatrick: Is that okay with the Committee or do you want to vote on it as one?

Male voice: Two parts.

Male voice: Two parts.

Chairman Fitzpatrick: Okay.

Ms. Hennessey: I move that the Board find a violation of Section Ten dash Sixty-Six of the Wethersfield Code of Ethics by Michael Kohlhagen, Superintendent of Schools, in granting special consideration to change the grade of a former student.

Chairman Fitzpatrick: Is there a second?

Male voice: Second.

Chairman Fitzpatrick: Any further discussion? All in favor of the motion say aye. (Ayes were heard.) Opposed? (One nay was heard.) The motion passes four to one. Okay. Are there any additional motions?

Male voice: I move to dismiss the allegations against Mr. Kohlhaben regarding the taking of the VLA course and the payment of it.

Chairman Fitzpatrick: Is there a second?

Female voice: Second.

Chairman Fitzpatrick: Further discussion? All in favor? (Ayes were heard.) Opposed? (One nay was heard.) Again, four to one. Are there any other issues on recommendations to be brought to the Board?

Ms. Hennessey: In view of Mr. Kohlhaben's present situation, that is, that he is no longer Superintendent of Schools, I don't know that any specific action will be taken by the Council other than to accept the decision of the Board of Ethics.

Male voice: There is censure as a remedy. I would move that the recommendation of the Board be that the cancel the recommendation to it be that they issue a censure of Mr. Kohlhaben.

(inaudible)

Male voice: The recommendation of the Board is that the appropriate action, and I think the only available action, is to recommend to cancel, censure of Mr. Kohlhaben.

Chairman Fitzpatrick: Is there a second?

Female voice: (inaudible)

Chairman Fitzpatrick: Is there a second to the motion?

Male voice: I'll second it.

Chairman Fitzpatrick: Okay, is there any further discussion?

Ms. Hennessey: I guess I need some clarification of how that would be implemented. We found a violation of the Code of Ethics. I'm not sure how the Town Council has the right to censure.

(inaudible)

Male voice: Censure is the same thing as a letter of reprimand.

Female voice: A letter of reprimand is for someone who no longer works for the Town?

Male voice: Well, they can still put it in his personal file (inaudible) is the only remedy under the rules, I think, that's available.

Ms. Hennessey: Well, on the basis that the recommendation would be that the Council direct a letter of reprimand to Mr. Kohlhaben for actions taken, taken in the period of June to December 2008 while acting of Superintendent of Schools. What is the Superintendent of Schools? (inaudible)

Male voice: I would modify my motion to conform to what Judge Hennessey indicated.

Male voice: Can you state the motion again?

Male voice: That the recommendation of the Board to the Town Council would be that it issue a censure of Mr. Kohlhagen through a letter of reprimand for his conduct concerning June through December of 2008 concerning the graduated student and the change or alteration of the grade on the transcript.

Chairman Fitzpatrick: Is there any further discussion? Seeing none, we can take a vote. All in favor? (Ayes were heard.) Opposed? (One nay was heard.) Okay, the vote is four to one in favor of the motion.

Male voice: I have a question. Would it be appropriate to take the same action with regard to Mr. Moore since he was a party to the grade change?

Male voice: He left subject to this proceeding.

Male voice: That's why I'm raising the question.

Chairman Fitzpatrick: Are there any other motions or any other considerations?

Ms. Hennessey: Not specifically on the matters that are before us tonight, but it has troubled during this whole process, but (inaudible) fairly broadly before it came to the Commission, I think the first I heard of it was in a newspaper article when I got word of it that something was going to be filed. I think that should be a caution to those who are going to file or contemplating complaints, not to put any chilling factors as far as filing claims is concerned, but it should be treated confidentially because it has an impact on people's reputations and perhaps professional lives and to have it so cavalierly talked about in the press and apparently on the evening news, which I didn't see but I heard about, I thought was completely out of line as far as the Complainants were concerned. So, that's just a caution I would like to state.

Chairman Fitzpatrick: Okay, any other comments? One thing I would like to, and if it's okay with the Committee, I would like to bring before if possibly to the Board, is and I think it was mentioned earlier, was the issue of communication. Throughout this discussion, there has been a lot of talk about when we originally saw some of the material, for instance handbooks and so forth, things that have been changed, and the indication was that policies are changed and policies are discussed with small groups, whatever, and I forget what the specific letters were that, that were there. It seems to me that we keep talking about the Government needs to be a lot more transparent and in this case, you know, I had some concerns regarding, you know, how the policies were changed or policies were established, if there is an audit trail for such things, and I think that the Board needs to be aware that this is a concern, at least this is a concern of mine and I would like to express that to the Board and I can do that as part of the Committee report or I can do it as a member of the public, but that was one of the things that kind of stuck out as we proceeded through this. I don't know if anybody else has any comments or issues? Okay. Okay. Seeing

Male voice: Do you need a motion to adjourn?

Chairman Fitzpatrick: Yes. Is there is a motion?

Male voice: Motion to adjourn.

Chairman Fitzpatrick: Is there a second?

Female voice: Second.

Chairman Fitzpatrick: Okay. The meeting is adjourned. Thank you.