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June 27, 2022

VIA EMAIL TO:

Ophelia King, kingot@milwaukee.k12.wi.us
Manager II, School Counseling

Therese Freiberg, freibetm@milwaukee.k12.wi.us
Director, Department of Employment Relations

Ms. King and Ms. Freiberg,

Marissa Darlingh submits this letter in response to the notice she received on June 9 indicating that she is being investigated for violating various District policies, as well as a corresponding packet of documents that was presented to her at a conference on June 15, 2022. The documents contained in the packet all center around a short speech Marissa gave at a rally at the state capitol on Saturday, April 23, 2022, in which she publicly expressed her concern over some of the “harms of gender identity ideology,” in particular the recent trend of providing children with “unfettered access to hormones—wrong-sex hormones—and surgery.”

As explained in more detail below, Marissa’s speech at the capitol—on a Saturday—was First Amendment protected speech and did not violate any of the District’s policies, so the investigation should be dropped without any disciplinary action. That said, although her speech is constitutionally protected and unpunishable, Marissa acknowledges that her use of profanity went too far, and her hope is to work towards a resolution so that everyone can move forward and she can continuing doing the job that she loves. To that end, Marissa would be happy to issue an apology to anyone who was offended by her use of profanity and to meet with any staff or students who were offended by what she said, to apologize directly and to listen to them and to how her words affected them. She is also open to other ideas that the District believes may lead to such a resolution.

It would be a mistake to terminate Marissa. She is an excellent guidance counselor, possibly one of the best in the District. She loves her students, and her students love her. Marissa has a tattoo on her right hand that was drawn by one of her fourth graders who cannot read, illustrating how passionate she is for the students she serves and how rare of a person she is. Ex. 1¹ (attached to this letter). In mid-May, her students wrote her a card with supportive notes as part of a counseling lesson called “Emotional Bank Accounts” (Ex. 2), and at least seven different students described her as the best in the school: “You’re the best teacher in the building”; “the best”; “the best counselor”; “best teacher”; “You are the best counselor and cool”; “best calming teacher”; “eres mi mejor amiga” (you are my best friend). Other students described her as “so kind,” “a great

¹ Citations to “Ex. __” are to exhibits attached to this response. Citations to “District Ex. __” are to the exhibits in the District’s packet.

person,” “a good mentor,” “thoughtful,” “sweet,” “very nice,” “fun and caring and chill,” and that she “cares about people.” Another teacher in the school explains how, after Marissa was suspended, she had multiple “children asking to see [Marissa] to talk to her.” Ex. 3. Marissa recently “started a therapy garden to work with children” and would help this teacher’s students get “through their day peacefully.” Yet another teacher recently commended Marissa’s “very professional,” “very polite,” and “invaluable,” assistance, which she appreciated so much she took time to “share this joy” with the principal. Ex. 4. Even the materials in the packet contain statements from multiple students describing her as one of their “favorite staff” (Student C) or “favorite teachers” (Student D). District Ex. 5. Student D “explained that when they are mad, frustrated, or sad Ms. Marissa would pick them up. ‘I talk to Ms. Marissa about how I feel, she is my check-in and check-out person and I am working on being respectful to other students.’” District Ex. 5. All that to say, terminating Marissa would not only be unjustified, it would also be a huge loss both for the District and for the students in her school.

Marissa would also like to directly address her “fuck transgenderism” comment up front. First, and most importantly, Marissa wants to make absolutely clear that, as the context shows, she was referring to policies and ideologies that she believes harm children, and not in any way referring to transgender students or individuals. Marissa has and always will equally love, respect, and serve all students under her care, including transgender-identifying students. Indeed, as she explained when she spoke, her speech and views were motivated by her passion to “protect” and “serve children.”

Second, Marissa’s speech occurred at the end of a day-long event, throughout which activists yelled various epithets at her and the other women speaking, including calling her a “lesbian nazi” and “cunt” (one video of some of these comments can be seen here²). These activists also attempted to shout speakers down (one example of which occurs at the end of Marissa’s short speech). Marissa also saw multiple activists wearing shirts that said “protect trans kids” next to an image of a knife (Ex. 5); which she took as a threat to harm her, based on a long history of threats against women who share her views.³ While none of this necessarily justifies her use of profanity, it explains why she was upset in the moment.

Finally, before responding to the materials presented in the June 15 packet, we note that the District has not yet explained how it believes Marissa’s speech or anything else shows a violation of any District policies. The June 9 letter merely lists policies she allegedly violated. During the conference on June 15, the District presented various documents without connecting any of them to policy violations. Accordingly, this response was drafted without knowing what Marissa should be responding to. We have attempted to anticipate and respond to what we believe the District will most likely focus on, and we have tried to be as thorough as possible, but to the extent there is anything in the packet not covered in this letter that the District believes shows a violation of its policies, we respectfully request an opportunity to supplement this response after the District explains its position and before the District makes a decision.

Since the main conduct that is at issue is Marissa’s speech at the capitol on April 23, we will start there.

² <https://youtube.com/shorts/zAYgkmVBxbY?feature=share>

³ For hundreds of examples, see <https://terfisaslur.com/>

Marissa's Speech at the Capitol is First Amendment Protected Speech

As you well know, it is black letter law that government generally has “no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018). Moreover, the United States Supreme Court has long recognized “that citizens do not surrender their First Amendment rights by accepting public employment.” *Lane v. Franks*, 573 U.S. 228, 231 (2014). Indeed, the Court has emphasized that “speech by public employees on subject matter related to their employment holds *special value*” because public employees “are uniquely qualified to comment on matters concerning government policies that are of interest to the public at large.” *Id.* at 240. Teachers, in particular, are “the members of a community most likely to have informed and definite opinions as to [school-related issues],” so “it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal.” *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 572 (1968).

When evaluating speech by a public employee, the first question the Court asks is “whether the employee spoke as a citizen on a matter of public concern.” *Lane*, 573 U.S. at 237 (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)). The “critical question” here is “whether the speech at issue is itself ordinarily within the scope of an employee’s duties.” *Id.* at 240. Marissa’s speech unquestionably was made in her capacity as a private citizen on a matter of public concern, and not as part of her official duties. She spoke on a Saturday, on her own time, at a public rally at the state capitol, a hundred miles from where she works, on a topic that is of immense public importance. Indeed, it’s hard to conceive of any type of speech closer to “the heart of the First Amendment.” *Id.* at 235.

If the speech was made in the employee’s role as a private citizen on a matter of public concern, as it clearly was here, the Court then engages in a careful balance between the interests of the employee, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer. *Id.* at 231. In conducting the balance, the courts have cautioned, however, that if the employee is speaking on a matter of public concern, the government has a higher burden with respect to showing a government interest in punishing the employee for speech.

The Seventh Circuit has reiterated this point: “when a public employee’s speech has touched upon a matter of ‘strong public concern,’ the government employer typically must ‘offer particularly convincing reasons to suppress it.’” *Kristofek v. Vill. of Orland Hills*, 832 F.3d 785, 796 (7th Cir. 2016). An employer’s “mere incantation of the phrase ‘internal harmony in the workplace’ is not enough to carry the day,” *Harnishfeger v. United States*, 943 F.3d 1105, 1121 (7th Cir. 2019), because “First Amendment rights cannot be trampled based on hypothetical concerns.” *Kristofek*, 832 F.3d at 796.

Here, the balance weighs heavily in Marissa’s favor. Marissa spoke at a public rally, as a private citizen, on a matter of great public concern where open debate is vital. The School District may disagree with her opinions, but such disagreements are bound to exist in a pluralistic society—and must be allowed to exist—especially on such an immensely consequential topic. Marissa’s speech did not call into question her loyalty to the district or create any problems in maintaining discipline—she was not criticizing her employer’s decisions or commenting on the District directly, she was merely expressing her views generally on the effect of certain ideologies and policies on children. There is also no evidence that Marissa’s speech has impeded her job performance.

The Documents Presented on June 15 Do Not Show Any “Particularly Convincing” Reason to Punish Marissa for Her Speech

Nothing in the documents presented on June 15 shows any significant disruption to either Marissa’s duties or the District’s services to its students. Between April 23, 2022, and early June, Marissa continued to do her job without incident. Indeed, Marissa received the notes from her students quoted above—describing her as the “best teacher in the building,” “caring,” “kind,” and “thoughtful,” among other things—on May 26, a month after her speech, illustrating that it had no effect on her students or school. District Exhibit 5 indicates that Ms. King interviewed four students (presumably in May, though the document is undated) to ask whether they “feel students are free and safe to be whom they want to be” and “who is your favorite person in the school?” All four answered “yes” to the first question (with one unrelated qualification), and two stated that Marissa is one of their favorite staff members. The only negative comment about Marissa was that she “can be too strict” and “calls [] out” students who are “not following directions” during circle time. Marissa acknowledges that she enforces behavioral rules to create a healthy learning environment; she relies on evidence-based classroom management techniques from Whole Brain Teaching.⁴ To the extent the District has any concerns about how she enforces rules, she would be happy to have a discussion about that and would also welcome any informal visits to observe the circle process.

Statements from two teachers (District Exs. 3, 4) describe a few unrelated and isolated incidents where these teachers apparently took issue with something Marissa said or did. While Marissa denies that these statements accurately describe her words and actions, we will not respond in detail to avoid unnecessarily lengthening this response, since none are related to Marissa’s speech in any way and do not appear to be the focus of the District’s investigation. We would also note that neither teacher ever spoke directly to Marissa about any of this (nor did anyone else). Marissa would be happy to meet with both teachers to address these incidents. However, to the extent that the District intends to rely on any of this as showing a separate violation of District policy, we respectfully request an opportunity to submit a supplemental and more detailed response.

District Exhibit 7 contains emails from nine different individuals, all sent within days of the April 23 rally in Madison, calling for the District to “fir[e]” or “severe[ly] reprimand and/or punish” Marissa for her speech. These emails are clearly part of a targeted campaign to have her punished for expressing her views. Three of the emails are identical to one another, word-for-word, and the rest all follow the same basic structure (a common tactic in such campaigns is to post a draft email on social media that others can copy and send). *Compare* District Ex. 7 pp 5–6 *with* District Ex. 7 pp. 8–9 *with* District Ex. 7 pp. 13–14. One of the emails even describes who coordinated this campaign and how:

“This was sent to me by a friend in Madison. She is part of a group who was counter protesting [at the April 23 event]. ... She and some other folks in Madison are attempting to shed light on this situation and those involved. One happens to be an elementary guidance counselor at MPS. She asked that people ... call, write, etc. to people at the school.”

District Ex. 7 p. 21. This is perhaps an example of the ultimate “heckler’s veto.” Those who disagree with Marissa, who went to the same public rally as her, and who expressed their own views by “counter-protesting,” now want Marissa punished for disagreeing with their views.

⁴ <https://wholebrainteaching.com/five-classroom-rules/>

None of the people who sent these emails claim to be students in the District, parents of students in the District, staff in the District, have any other relationship with the District, or even *claim to live in the District*. None describe having any interaction with Marissa at her job or any knowledge of how she performs her job. None describe any “disruption” to MPS that would overcome Marissa’s First Amendment rights, nor does MPS’s receipt of such emails itself count as such a disruption.⁵

Multiple of the documents in the packet relate to an incident on June 3 when another teacher in the school showed her 5th grade students a Milwaukee Journal Sentinel article (and apparently “videos” as well) about Marissa, and told her students “they have the right to not see her for counseling services”—a transparent attempt to rally opposition to Marissa. District Ex. 12; District Exs. 13–24. Marissa saw her name and picture projected on the smartboard as she walked by, and she entered the classroom briefly (for approximately sixteen seconds) to ask why the teacher was talking about her to the class. Marissa left and told the principal what was happening, who then intervened. Later that day he told the teacher that she should not “be talking about this” in her classroom and made clear that he “never approved her decision to discuss news articles about Ms. Darlingh.” District Ex. 12.

The principal took statements from the teachers involved and the students in the room. In Marissa’s statement, she explained that “she would be willing to have a conversation with” the teachers involved, District Ex. 16, p. 3—and, as noted above, she *still* would be happy to meet with these or any other teachers who are upset about Marissa’s speech. By contrast, the teacher who showed the article to her class implicitly acknowledges in her statement that she never spoke to Marissa about her concerns before bringing the issue into the classroom. District Ex. 18 p. 2.⁶

This incident cannot be used to show that Marissa’s speech “disrupted” District activities because the disruption *was caused by the other teacher’s decision to bring the issue into the classroom and create controversy in the school*, which even the principal recognized was inappropriate. Teachers who object to another teacher’s speech outside the school cannot manufacture a disruption to then be used against the speaker. Again, that would amount to a “heckler’s veto.” *See Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2056 (2021) (Alito, J., concurring) (“[E]ven if [] speech is deeply offensive to members of the school community and may cause a disruption, the school cannot punish the student who spoke out; ‘that would be a heckler’s veto.’ ... The school may suppress the disruption, but it may not punish the off-campus speech that prompted other students to engage in misconduct.”) (citation omitted); *see also id.* at 2047–48 (majority op.) (noting no evidence of any “substantial disruption”).

In any event, all but a few of the statements taken from the students in the classroom suggest the incident had little effect on them. *E.g.*, District Ex. 22 p. 1 (“I don’t remember what Mx. Chappelle said.”); District Ex. 22 p. 3 (“I don’t know what is going on.”); District Ex. 22 p. 4 (“Mx. Chappelle show[ed] the thing ... she started reading a litt[le] then Ms. Marissa c[ame] and said [some]thing.”); District Ex. 22 p. 6 (“I s[aw] somet[hing] but I forgot it.”); District Ex. 22 p. 7

⁵ Two of the emails accuse Marissa of “berat[ing], harass[ing] and get[ting] in the faces of trans women, as well as attempt[ing] to film up peoples [sic] skirts” during the event on April 23. District Ex. 7 pp. 16, 21 (notably, the sentence stating this is identical in each email, showing it was copied and pasted). Marissa emphatically denies that she did this or anything even remotely like it, and there is no evidence whatsoever that she did, other than these hearsay emails from people who are clearly out to get Marissa.

⁶ One other teacher attempted to confront Marissa after this event, but in a way that felt aggressive to Marissa and like she was being cornered, as she explained in her statement. Marissa attempted to schedule a guided problem solving meeting with this teacher, but the teacher declined to participate. *See* Exs. 6, 7.

(“The background story of some person I forgot their name. I don’t remember the other parts.”); District Ex. 22 p. 8 (“I don’t know”).

To summarize, nothing in the packet shows any disruption to the District that outweighs Marissa’s substantial First Amendment right to speak on an important issue of the day.

It is also important to clarify a few things about the Milwaukee Journal Sentinel article, since that was the focus of this incident and because the District included it in its packet. After DPI initiated its investigation of Marissa for “immoral conduct,” Marissa felt it was important to respond publicly, both to defend herself (DPI has posted on its website that she is “under investigation”⁷) and to clarify her statements and view. She spoke with the Journal Sentinel reporter for a half an hour, carefully explaining her views and concerns. The reporter, however, reported none of that but instead wrote a piece that mischaracterized multiple things, including what she said. Most importantly for the District’s purposes, the article inaccurately reported that Marissa said she would not use students’ preferred names or pronouns. What she said was that she would follow *the parents’* lead as to a student’s names and pronouns, even if the student transitioned. We (WILL) asked the paper to issue a correction, which it ultimately did (note that the article indicates it was “updated” after it was published), though it buried that clarification deep in the article. Marissa also explained to the reporter that she is not “antitrans” (nor was the rally an “antitrans” rally)—she and the other women present at the rally have legitimate concerns about how certain policies and ideas are harming children and women, and they have a right to express their concerns.

Marissa’s understanding is that following the parents’ lead as to names/pronouns is consistent with the District’s policies. *E.g.* Employee Handbook, Core Belief #5 (“Families are valuable partners.”). To the extent that the District disagrees, she would respectfully like clarification about this. As far as she can recall, Marissa was never given, or trained on, the “Gender Inclusion Guidance” document that was included in the packet (District Ex. 25), and none of the “receipts” at the end show that she was. Exs. 44–48.

Marissa’s Speech Did Not Violate Any District Policy

Even setting the First Amendment aside, Marissa’s speech at the capitol did not violate any District policy. The notice letter sent to Marissa lists various policies that she allegedly violated, and the June 15 packet contained some of these policies with portions highlighted. We will address each in turn.

1. Administrative Policy 6.07(2)(a) - “insubordination, including disobedience, failure, or refusal to carry out directions, assignments, or instructions.”

Nothing in the packet shows that Marissa has been insubordinate, disobedient, or has failed or refused to carry out any direction or instruction. There is no evidence of any “direction” or “instruction” that she violated by speaking at a rally on her own time.

No statement made by Marissa at the public rally shows disobedience toward any direction or instruction given to Marissa. She did say that she will not be the cause of a student’s transition—by promoting it, encouraging it, or initiating it—and, as far we can tell, no District policy requires her to do so. As explained above, Marissa will follow the parents’ lead as to each student’s name and pronouns. And, if any of her students ever struggle with gender identity issues, she also will encourage them to talk to their families and provide community resources to all adult caregivers

⁷ <https://elo.wieducatorlicensing.org/datamart/licenseDetails.do?xentId=870025>

who reach out, some of which she learned about recently at a voluntary meeting on June 13, 2022, with members of the new Department of Inclusion and Gender Identity. To the extent the District believes that Marissa's statements conflict with the District's gender identity guidance, she was never given that guidance or trained on it (and therefore it cannot qualify as a "direction" or "instruction" that she failed to follow), and it is, by its own description, only guidance.

2. Administrative Policy 6.07(2)(h) - "Failure, refusal, or negligence in the performance of assigned duties"

Again, nothing in the packet shows that Marissa has failed, refused, or been negligent in the performance of her assigned duties. No one at the District has ever had a conversation with her or explained to her how her conduct deviated from her assigned duties, or given her any opportunity to correct any deviation, so she cannot be characterized as "fail[ing]" or "refus[ing]" to perform her assigned duties.

See also answer to 1 above.

3. Administrative Policy 6.07(2)(i) - "Violation of federal, state, and/or local laws/ordinances which are substantially job-related or render the employee unavailable for work due to incarceration"

The District has not identified any federal, state, or local laws that Marissa has violated, and we are aware of none.

4. Administrative Policy 6.07(2)(n) - "Threatening, harassing, intimidating, interfering with, coercing, injuring, or using abusive language toward students, Board employees, or the public."

Marissa has never threatened, harassed, intimidated, interfered with, coerced, injured, or used abusive language toward students, Board employees, or the public. To our knowledge, no students or Board employees were present at the April 23 event, nor were Marissa's comments directed "toward" anyone. She was speaking generally to express her views on an important issue of the day. And while she acknowledges that her use of profanity went too far, it was not in any way "abusive" or "threatening." Undoubtedly numerous District employees regularly use similar language on their own personal time, on social media, at events, etc., without being punished by the District for it.

5. Administrative Policy 6.07(2)(p) - "Engaging in activity that significantly detracts from the school district's image or reputation"

There is no evidence that Marissa's speech has "significantly detracted" from the District's image or reputation. The District need not agree with or endorse Marissa's views, and it can even openly disagree with them, while respecting her right as a private citizen to have and to express her views. By using the word "activity," this Policy also does not cover speech. To the extent the District interprets this Policy to prohibit speech that it disagrees with, it is vague and violates the First Amendment.

6. Administrative Policy 6.07(2)(q) - "Failure or refusal to comply with school/departmental work rules, policies, or procedures."

Again, there is no evidence that Marissa has failed or refused to comply with any school/departmental work rules, policies, or procedures. No one at the District has ever had a conversation with her or explained to her how her conduct violated any policy, or given her any opportunity to correct any violation, so she cannot be characterized as "fail[ing]" or "refus[ing]" to comply with any policies.

See also answer to 1 above.

7. Administrative Policy 1.04 - Nondiscrimination

In the June 25 packet, the District highlighted the following language from Administrative Policy 1.04:

No person may be denied admission to or participation in the benefits of any public school in the Milwaukee Public Schools, or be discriminated against in any curricular, extracurricular, student service, recreational, or other program or activity, because of the person's sex, gender, gender identity, gender expression, gender nonconformity, race, color, national origin, ancestry, creed, religion, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability or handicap, or any other characteristic protected by applicable law, including without limitation by enumeration: section 118.13, Wis. Stats.; Title IX of the Education Amendments of 1972 (sex); Title VI of the Civil Rights Act of 1964 (race, color, and national origin); and section 504 of the Rehabilitation Act of 1973 (disability). The district may operate single-gender schools and/or provide single-gender classes, in accordance with sections 118.13(1) and 120.13(37m), Wis. Stats.

There is no evidence whatsoever that Marissa has ever “denied admission to or participation in” any school program or “discriminated against” any student, transgender or otherwise. As she stated above, Marissa has and always will equally love, serve, and support all students, including transgender-identifying students, and she will follow the parents’ lead as to names and pronouns.

8. Administrative Policy 8.01 - Student Non-Discrimination

Policy 8.01 contains similar language to that in 1.04, and for the same reasons Marissa did not violate this policy. There is no evidence that she “discriminated against” any student or “denied admission to” or “participation in” any program or any of the areas listed in 1.04(c). The District also highlighted (1)(e), which lists a “range of inappropriate behaviors *directed towards students*,” but there is no evidence whatsoever that Marissa has ever done any of these things toward students. Nor can any of her speech at the capitol be characterized as “name calling, bullying, physical attacks, [or] intimidation.”

The District also highlighted subdivision (1)(a), which states generally that it is the District’s goal to “provid[e] the best education possible for every child in the district.” That is Marissa’s goal as well.⁸

9. Administrative Policy 8.52 - Bullying

Marissa did not violate this policy, for multiple reasons. First, nothing she has said or done fits the definition: “deliberate or intentional behavior using words or actions intended to cause fear, humiliation, intimidation, harm, or social exclusion.” Marissa did not intend to cause any of these things, but simply to express her views on an important topic. Even if something she did on her own time could be characterized this way, this policy, by its own terms, only applies “on school district property” (“in all schools, in school district buildings, [and] in education environments.”).

⁸ Marissa was also never given this policy, as reflected in District Ex. 44.

10. Administrative Policy 6.03 - Anti-Harassment / Anti-Bullying: Staff

Policy 6.03 contains a similar prohibition on “bullying behavior” to that in 8.52, and none of Marissa’s speech can be characterized as “bullying behavior,” for the same reasons above. Nor was her single, short speech at the capitol “repeated behavior.” This policy is also directed primarily to behavior “in all schools” and “on District property.” While it appears to also cover some “off-duty speech ... that results in a substantial disruption of the workplace,” there is no evidence that her speech actually resulted in such a “substantial disruption,” for the reasons explained above.

11. Administrative Policy 1.06 - Equity in MPS

The District’s Equity Policy largely contains high level “guiding principles” and “equity goals,” so it is hard to understand what Marissa could have violated. As she has explained above, Marissa has and always will treat all students equally, even transgender identifying students. Like the District, she is committed to ensuring that “all students receive the support and resources that they need to become successful.” There is no evidence that she has ever treated any student differently—if anything, the positive testimonies from students above show that she has consistently helped students be successful.⁹

12. Employee Handbook: Rules of Conduct

The Rules of Conduct in the Employee Handbook are identical to those in Policy 6.07, which are addressed above.

13. Employee Handbook: Professional Conduct

This portion of the Handbook states that “[a]ll employees shall model professional behaviors at all times *while in the workplace*. All employees are expected to be professional and courteous when interacting with students, parents, colleagues, and the community.” This section obviously does not apply to Marissa’s public speech in Madison on a Saturday, and she has always been professional and courteous when interacting with students, parents, colleagues, and the community while at work.

14. Employee Handbook: Customer Service

As with the section on professional conduct, the customer service portion lists various “expectations” of its staff to “maintain a culture of exceptional customer service” while at work. She was not at work when she gave her speech—she was at a public forum in Madison on a Saturday. Further, the high degree of respect in which Marissa is held by students and teachers shows that she actively contributes to a culture of exceptional customer service.

15. Employee Handbook: Harassment / Bullying Free Workplace

This portion of the employee handbook simply incorporates language from Policies 6.03 and 8.52, which are addressed above.

16. Employee Handbook: Core Beliefs

It is hard to understand how Marissa could have violated the District’s core beliefs. She fully agrees that “children come first” and that “families are valuable partners.” She has and always will treat

⁹ Additionally, Marissa also was not given this policy, as reflected in District Ex. 44.

all students equally, and there is no evidence that she has not. Indeed, during her speech, she stated that she “exist[s] in this world to protect children.”

17. School Staff Manual - 3.01

This portion of the staff manual simply incorporates the Employee Rules of Conduct from Policy 6.07, which are addressed above.

18. School Staff Manual - 3.03

This portion of the staff manual mirrors the “professional conduct” portion of the Employee Handbook, which is addressed above.

19. School Staff Manual - 4.27

This portion of the staff manual describes school counselors’ general duties: to “promote student success, provide preventative services, and respond to identified student needs,” by, among other things, “removing barriers to academic achievement,” “supporting social/emotional development,” “providing advice and guidance.” There is no evidence that Marissa has not done this effectively, or that she has treated any students differently. If anything, the statements from students reflect that she has been a very effective counselor.

20. Transgender/Gender Non-Conforming Youth Standards

While the District included its “Gender Inclusion Guidance” document in the June 15 packet, it did not highlight any portion of it or identify which part of it Marissa allegedly violated. And there is no evidence presented in the packet that she has violated any portion of this document. As explained above, Marissa will follow the parents’ lead with respect to the name and pronouns of students in her school, which is consistent with the portion of the guidance addressing transitions: “K-5 students - Parents/guardians will most likely be involved and may initiate the conversation.” Furthermore, as far as Marissa can recall, she was never given or trained on this guidance, and none of the “receipts” in the packet show that she was. Exs. 44–48. Therefore, to the extent the District believes something Marissa has said or done is in conflict with this guidance, the first step should be to have a conversation with her about it and explain to her what she should do differently.

* * * * *

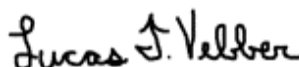
To reiterate one more time, while nothing in the June 15 packet warrants discipline, Marissa’s hope is to work with the District and any staff or students who were offended by her speech to resolve this so that she and her colleagues can get back to doing the jobs that they love.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Luke Berg
Deputy Counsel



Lucas Vebber
Deputy Counsel



The you are
Fun Best the best counster and nice
She cares

The cool about people

Best Counster! You

good

speaks

Very Professional!

Best

teacher

best person

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Yo ur a savor

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A mable

Ms. Marissa

She's nice
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So kind

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nice

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Awesome

funny!!

Sweet

Kind

Very chill

nice

very nice

strategic chill

fun and caring and

EXHIBIT

2

Luke Berg

From: Gonzalez, Martha A <gonzalmx@milwaukee.k12.wi.us>
Sent: Thursday, June 16, 2022 8:56 AM
To: Luke Berg
Subject: Re: Support for Marissa Darlingh

I support Marissa's work with the students. She started a therapy garden to work with children in the front center of the building. She also helps me when I substitute in classrooms. She works with the children to take care of personal issues that distract them from paying attention and completing their classwork. Marissa has taken children to her office to work with them and find them food if necessary. This allows me to teach and go on with classes. When students come back then they can do their work and go through their day peacefully. After that she brings them back ready to work. Marissa asked me on Pd day if I had students that she could work with. I gave her names of two students that come to my attention. I have had children asking to see her to talk to her. 😊



From: [Brooks, Demetris](#)
To: [Blandon, Fritz A](#)
Cc: [Darlingh, Marissa](#)
Subject: Very Good Observation regarding service received from Ms. Marissa Darlingh
Date: Friday, April 8, 2022 6:04:50 PM

Principal Blandon,

I would like to commend Ms. Marissa on her professional and helpful assistance that I received from her on Friday, 04/08/22.

Ms. Marissa asked if I needed assistance with a couple of students today; she was 'very' professional and 'very' polite. There was one Student that me and Ms. Helfenbein were working with most of the afternoon.

Ms. Marissa offered her help and assistance. After I explained the behavior and situation, Ms. Marissa left it up to me and Ms. H. to attend to that Student; Gabriel needs to fix a couple of problems with us.

Ms. Marissa offered assistance with Olivia after I tried to get her up for Art Class; Olivia was slumped over sleep in a corner near the coat racks. Ms. Marissa's assistance was invaluable as I tried to get the rest of the class to Art. I really appreciated all of the assistance Ms. Marissa offered me today and wanted to share this joy with you.

Ms. Brooks
MPS Teaching Assistant
Allen-Field Elementary







**MILWAUKEE
PUBLIC SCHOOLS**

OFFICE OF HUMAN CAPITAL
Employee Rights Administration Department
5225 West Vliet Street
P.O. Box 2181
Milwaukee, WI 53201-2181
Phone: 414-773-9876
Fax: 414-777-7857

Employee Request for GPS: Guided Problem Solving

How did you hear about GPS? *Yashica*

Form: ☐ Fax ☐ Mail ☒ Other *Scan*

Request by: ☒ individual ☐ joint request

Requesting Party:

Name: *Marissa Darling*

Address: *730 W Lapham Blvd.*

Phone (Work/Other): *(414) 902-9359*

E-mail address (Work/Other): *darlinmn@milwaukee.k12.wi.us*

Work Location: *Allen-Field*

Brief Summary of Requesting Party's Issues:

13/22
Alondra García, 2nd grade bilingual teacher, approached me aggressively twice in one day in response to something I said on my own time that she disagreed with. First she cornered me in my office so I walked away and hid in a storage room. Second, she ambushed me on my way out of the school bldg. around 4:30

Responding Party:

Name: *Alondra García*

Address: *730 W Lapham Blvd.*

Phone:

E-mail address: *garciaa2@milwaukee.k12.wi.us*

Work Location: *Allen-Field*

Brief Summary of Responding Party's Issues: (Where a Joint Request)

EXHIBIT

6



**MILWAUKEE
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Previous Action Taken by Parties to Resolve Issues, If Any:

Dept. of Equity and Inclusion voluntary meeting scheduled 6/13/22. I plan to attend

Is there any kind of Grievance, Unfair Labor Practice or formal or informal complaint pending? If so, who filed? Please specify date filed.

I received notice of discipline meeting on 6/19/22 with bullying and harassment cited
Are you requesting a particular GPS Guide? If so, who?

(See ERAD homepage for GPS Guide Profiles)

Marc Sanders

Are there any other circumstances we should be aware of?

When Ms. Garcia approached me on my way to my car 6/3/22 at 4:30 she accused me of listening in on a private conversation she was having with 2 teachers in a darkened classroom as I passed. When I told her I hadn't been listening to anything she said "no, honey, I don't think that's what's happening."

I responded by saying "don't call me honey. I'm older than you and I deserve respect. I acknowledge that this was not an appropriate way to respond."

Received by: _____
Date Received: _____
Intake by: _____
Assigned to: _____
Action Taken: _____

(e.g., assigned to mediation)

From: [Spears, Yashica Q](#)
To: [Darlingh, Marissa](#)
Cc: [Ehrsam, Malin](#)
Subject: Re:
Date: Wednesday, June 15, 2022 10:02:30 AM

Good morning,

I briefly discussed the process with the potential participant, and she declined to participate.

Thank you,

Yashica Spears
EEO Compliance Specialist
Employee Rights Administration Department
Office of Human Resources
Milwaukee Public Schools
Phone (414) 475-8427
Fax (414) 777-7857
spearsyq@milwaukee.k12.wi.us

From: Darlingh, Marissa <darlinmn@milwaukee.k12.wi.us>
Sent: Friday, June 10, 2022 9:14 AM
To: Spears, Yashica Q <spearsyq@milwaukee.k12.wi.us>
Subject:

